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THE ALL INDIA CRIMINAL COURT MANUAL
IMPERIAL ACTS—Vol. I,

THE ALL INDIA CRIMINAL COURT MANUAL

*(Containing all the important Criminal Acts in daily use with Illustrations
Changes and Case-law)*

BY

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Vol. I—Minor Acts

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P R E F A C E .

A Criminal Court Manual, containing all the important Criminal enactments of the Imperial Legislature in daily use all over India and brought up-to-date with notes of all the legislative changes and select case-law, has been, it barely requires mention, a long-felt want in the learned profession.

The idea of bringing out such a Manual has been in contemplation from 1911, the intention being that it should follow on the heels of the ALL INDIA CIVIL COURT MANUAL, which had been published in August 1910, when Mr. SANJIVA RAO was alive. For several reasons, all of which need not here be stated, the idea did not materialise as rapidly as it was desired. All the resources of the LAW PRINTING HOUSE were then absorbed in the work of finishing the ALL INDIA DIGEST, CIVIL AND CRIMINAL, and of the reprint of the INDIAN LAW REPORTS SERIES from 1876 to 1900 in the INDIAN DECISIONS, NEW SERIES. And, just at about the time these two works came to a close, the war had begun to tell seriously on the enterprises of publishers. The result was that the publication of the ALL INDIA CRIMINAL COURT MANUAL had to be indefinitely postponed. Though, even now the current prices of paper, binding materials, etc., have not appreciably reduced the cost of publications, the situation seems to be easier, giving publishers room to hope that they may embark on works of this sort.

In the interval that has elapsed between the publication of the ALL INDIA CIVIL COURT MANUAL and the present time, the demand of the profession for an ALL INDIA CRIMINAL COURT MANUAL, framed on the model of the ALL INDIA CIVIL COURT MANUAL, has not at all abated.

but, on the other hand, has been continuous and strong, the reasons that actuate this demand being the same as in the case of the ALL INDIA CIVIL COURT MANUAL. The publication at present of the ALL INDIA CRIMINAL COURT MANUAL requires, therefore, no elaborate justification.

For the sake of convenience, it is proposed to distribute all the Criminal Imperial Acts over two volumes. The three Major Acts, *viz.*, the Criminal Procedure Code, the Evidence Act and the Penal Code, for which practitioners have daily need, will go to make up one volume and the remaining, which we may call the Minor, Acts, will form one volume. Volume I will contain the Minor, and volume II the three Major, Acts.

Since provisions of a criminal nature are also contained in civil enactments, only such criminal provisions are therefrom extracted and given under the heading of the particular Act from which they are taken. In the choice of such provisions, as in the choice also, of the Acts for this Manual, it has been deemed better to err on the side of copiousness than otherwise.

The volumes of the Unrepealed Acts, published by the Government of India in 1909, and the Government editions of their amendments and of the subsequent Acts have been taken as the text of the enactments printed in this Manual, and faithfully reproduced down to the minutest details.

The Acts are continuously printed in the alphabetical order of their short titles as given in the Government edition. The first syllable or the first word or words of the title of each enactment have been printed in thick types at the top of each page as in a Dictionary, as also the title of each enactment in smaller types, so as to enable the reader to find out any Act he may require on merely opening the book.

Each Act has prefixed to it a chronological table styled "HISTORICAL MEMOIR," showing at a glance the previous enactments that have led up to it, and the changes made in it from time to time, thus enabling the reader to see its life-history, as it were. This feature was, after much

labour, first introduced into our ALL INDIA CIVIL COURT MANUAL—and has ever since become its distinguishing feature—in order to give effect to a suggestion at that time made by the Hon'ble Mr. Justice TUDBALL of the Allahabad High Court.

The reader will thus see that the Acts printed in the ALL INDIA CRIMINAL COURT MANUAL have incorporated all the latest amendments and modifications and that the same may be safely used without the least doubt as to the enactments being up-to-date.

Such portions of the section of each enactment as have undergone legislative changes have been indicated by numerical indices within thick square brackets, thus, [1], [2], [3], while those portions that have received judicial interpretation have been indicated by algebraical indices within semi-circular brackets, such as, (a), (b), (c), etc. Under the corresponding figures or alphabets, introduced by the words, legislative changes or case-law, as the case may be, printed in thick types in the foot-notes, have been respectively noted all the legislative changes up-to-date and only the most important case-law bearing upon the portions so marked, with only such catch-words and in such manner as may be necessary to point out, in the briefest space possible, the sources of information, leaving the reader to make further researches.

Each volume of this Manual has prefixed to it two Tables of Contents, one Table giving merely the list of the Acts contained in the volume, and the other Table giving in detail the contents of each of the Acts printed therein.

A consolidated subject-index for the Acts printed in Volumes I and II (Imperial Acts) will be added at the end of the second volume.

It is hoped that the learned public will find this ALL INDIA CRIMINAL COURT MANUAL as useful as its companion, the ALL INDIA CIVIL COURT MANUAL.

THE LAWYER'S COMPANION OFFICE,
MADRAS,
Dated 27th October, 1919.

P. HARI RAO.
S. KASTURI RANGACHARI.

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5. Governor General may order all the provisions of this Act to be in force in British India, or in any part thereof.
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8. Foreigners, being masters of vessels or employed therein, to report themselves when they cease to be so employed.
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CHAPTER VI—PROTECTION OF, AND CARRIAGE OF PASSENGERS IN, INLAND STEAM-VESSELS.

49. Power for Governor General in Council to declare dangerous goods.
50. Carriage of dangerous goods.
51. Power of owner or master of steam-vessel to throw overboard dangerous goods.
52. Power for Local Government to make rules for protection of inland steam-vessels from accidents.
53. Power for Local Government to make rules as to carriage of passengers in inland steam-vessels.
54. Power for Local Government to make rules for protection of passengers.

CHAPTER VII—PENALTIES AND LEGAL PROCEEDINGS.

55. Penalty for making voyage without certificate of survey.
56. Penalty for neglect to affix certificate of survey in inland steam-vessel.
57. Penalty for neglect or refusal to deliver up certificate of survey.
58. Penalty for carrying excessive number of passengers on board.
59. Penalty for serving or engaging a person, to serve, as master or engineer without certificate.
60. Penalty for master failing to give notice of wreck or casualty.
61. Penalty for failing to deliver up suspended or cancelled certificate.
62. Penalty for taking or delivering or tendering for carriage dangerous goods on board inland steam-vessel without notice.
63. Penalty for misconduct or neglect endangering inland steam-vessel or life or limb.
64. Levy of fine by distress of inland steam-vessel.
65. Jurisdiction of Magistrates.
66. Place of trial.

Inland Steam-Vessels Act, 1917—(Concluded).**SECTIONS.****CHAPTER VIII—SUPPLEMENTAL.**

- 67. Power for Local Government to make general rules.
- 68. Power for Local Government to modify application of Act to certain inland steam-vessels.
- 69. Exemption of His Majesty's and Government vessels.
- 70. Power for Local Government to define tidal water.
- 71. Fees recoverable as fines.
- 72. Certificated masters of inland steam-vessels to be deemed pilots under section 31 of Act XV of 1908.
- 73. Application of Act to vessels propelled by electricity or other mechanical power.
- 74. Publication of rules.
- 75. Repeals and savings.

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- 1. Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders.

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- 1. Short title, extent and commencement.
- 2. Repeal.
- 3. Definitions.

PART II—ACQUISITION—*Preliminary Investigation.*

- 4. Publication of preliminary notification and powers of officers thereupon.
- Declaration of Intended Acquisition.*
- 6. Declaration that land is required for a public purpose.
- 7. After declaration Collector to take order for acquisition.
- 8. Land to be marked out, measured and planned.
- 9. Notice to persons interested.
- 10. Power to require and enforce the making of statement as to names and interests.

PART VIII—MISCELLANEOUS.

- 45. Service of notices.
- 46. Penalty for obstructing acquisition of land.
- 47. Magistrate to enforce surrender.

Land Acquisition (Mines) Act, 1885 ... 540

- 1. Short title, commencement and local extent.
- 11. Power to officer of Local Government to enter and inspect the working of mines.
- 12. Penalty for refusal to allow inspection.
- 17. This Act to be read with Land Acquisition Act, 1870.

Laws Local Extent Act, 1874 ... 542

- 1. Short title.
- 2. Interpretation-clause.
- 3. Local extent of Acts in first schedule.
- 4. Local extent of enactments in second schedule.
- 5. Local extent of enactments in third schedule.
- 6. Local extent of enactments in fourth schedule.
- 7. Local extent of enactments in fifth schedule.
- 8. Savings.
- 9. [*Repealed Enactments.*]

SCHEDULES.**Legal Practitioners Act, 1846** ... 554

- 1, 2 and 3. [*Repeal of enactments.*]
- 4. Office of pleader open to persons duly certificated.
- 5. Right of barrister to plead in all Courts.
- 6. Enactment to cease to have force except for specified purposes.

Legal Practitioners Act, 1846—(Concluded).

SECTIONS.

7. Private agreement between parties and pleaders.
8. Enforcement of private agreements.
9. Remuneration for opinions.
10. Power of Sadar Amin to fine pleader. Appeal.
11. Rules applied.
12. Power of Munsif to fine pleader. Appeal.
13. Act not to affect certain vakils.

Legal Practitioners Act, 1853

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1. [*Repeal of enactments.*]
2. Pleader not bound to attend Court except at hearing of cause in which he is employed.
3. Right of Supreme Court attorneys to plead in all Sadar Courts.
4. Barristers and attorneys of Supreme Courts not required to produce certificate of character, etc., but may plead in all subordinate Courts.

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CHAPTER I—PRELIMINARY.

1. Short title. Commencement. Local extent.
2. Repeal of enactments.
3. Interpretation-clause.

CHAPTER II—OF ADVOCATES, VAKILS AND ATTORNEYS.

4. Advocates and Vakils.
5. Attorneys of High Court.

CHAPTER III—OF PLEADERS AND MUKHTARS.

6. Power to make rules as to qualifications, etc., of Pleadors and Mukhtars.
7. Certificates to Pleadors and Mukhtars.
8. Pleadors on enrolment may practise in Courts and Revenue-offices.
9. Mukhtars on enrolment may practise in Courts.
10. No person to practise as Pleader or Mukhtar unless qualified.
11. Power to declare functions of Mukhtars.
12. Suspension and dismissal of Pleadors and Mukhtars convicted of criminal offence.
13. Suspension and dismissal of Pleadors and Mukhtars guilty of unprofessional conduct.
14. Procedure when charge of unprofessional conduct is brought in subordinate Court or Revenue-office.
Suspension pending investigation.
15. Power to call for record in case of acquittal under section 14.
16. Power to make rules for Mukhtars on appellate side of High Court.

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17. Power to make rules as to qualifications, etc., of Revenue-agents.
Publication of rules.
18. Certificates to Revenue-agents.
19. Enrolment of Revenue-agent.
20. No person to act as agent in Revenue-office unless qualified.
21. Dismissal of Revenue-agent convicted of criminal offence.
22. Suspension and dismissal of Revenue-agents guilty of unprofessional conduct.
23. Procedure when Revenue-agent is so charged in subordinate office.
24. Power to Chief Controlling Revenue-authority to call for record.

CHAPTER V—OF CERTIFICATES.

25. Fee for certificates.
26. Dismissed practitioners to surrender certificates.

CHAPTER VI—OF THE REMUNERATION OF PLEADERS, MUKHTARS AND REVENUE-AGENTS.

27. High Court and Chief Controlling Revenue-authority to fix fees on civil and revenue proceedings.
28. Agreements with clients.
29. Power to modify or cancel agreements.

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30. Agreements to exclude further claims.
31. Reservation of responsibility for negligence.

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32. On persons illegally practising as Pleaders, Mukhtars or Revenue agents.
33. On suspended or dismissed Pleader, etc., failing to deliver certificate.
34. On suspended or dismissed practitioner practising during suspension or after dismissal.
35. Revision of fines.
36. Power to frame and publish lists of touts.

CHAPTER VIII—MISCELLANEOUS.

37. Local Government to appoint examiners.
38. Exemption of High Court practitioners from certain parts of Act.
39. Suspension or dismissal of person holding Mukhtar and Revenue-agent's certificates.
40. Pleaders, etc., not to be suspended or dismissed without being heard.
41. Power for certain High Courts to enrol advocates.
42. Repeal of Acts I of 1846 and XX of 1853.

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1. Title, extent and commencement.
2. Definitions.
3. Appointment of leper asylums by Local Government.
4. Appointment of Inspectors of Lepers and Superintendents of Asylums.
5. Constitution of Board.
6. Arrest of pauper lepers.
7. Person arrested how to be dealt with.
8. Procedure with regard to pauper lepers.
9. Power to prohibit lepers from following certain trades and doing certain acts.
10. Conviction after previous conviction.
11. Penalty on person employing lepers in prohibited trade.
12. Re-arrest of escaped lepers.
13. Inspection by Board.
14. Order of discharge by Board.
15. Appeals.
16. Power of the Local Government to make rules.
17. Power to local authorities to expend funds and appropriate property to asylums.
18. Protection to persons acting *bona fide* under Act.
19. Lepers from Native States.

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Letters Patent (Allahabad)

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1. Establishment of High Court for the North-Western Provinces.
 2. Constitution and first Judges of the High Court.
 3. Declaration to be made by Judges.
 4. Seal.
 5. Writs, etc., to issue in name of the Crown and under Seal.
 6. Appointment of officers.
- Admission of Advocates, Vakeels and Attorneys.*
7. Powers of High Court in admitting Advocates, Vakeels and Attorneys.
 8. In making rules for the qualifications, etc., of Advocates, Vakeels and Attorneys.
 10. Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction.

Criminal jurisdiction.

15. Ordinary original jurisdiction of the High Court.
16. Jurisdiction as to persons.
17. Extraordinary original criminal jurisdiction.
18. No appeal from High Court exercising original jurisdiction.

Letters Patent (Allahabad)—(Concluded).

SECTIONS.

19. High Court to review cases on points of law reserved by one or more Judges of the said High Court.
20. Appeals from Criminal Courts in the Provinces.
21. Hearing of referred cases, and revision of criminal trials.
22. High Court may direct the transfer of a case from one Court to another.

Act under which punishments to be inflicted.

23. Indian Penal Code.
24. Judges may be authorized to sit in any places by way of circuit, or special commission.

Powers of Single Judges and Division Courts.

27. Single Judges and Division Courts.

Criminal Procedure.

29. Regulation of proceedings.

Appeals to Privy Council.

30. Power to appeal.
31. Appeal from interlocutory judgment.
32. Appeal in criminal cases, etc.
33. Rule as to transmission of copies of evidence and other documents.

Calls for Records, etc., by the Government.

34. High Court to comply with requisition from Government for records, etc.
35. Powers of Indian Legislature preserved.

Letters Patent (Bombay)

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1. Revocation of Letters Patent of 1862.
2. High Court at Bombay to be continued.
3. Judges of the said High Court to be continued.
4. Clerks, etc., of the said High Court to be continued.
5. Declaration to be made by Judges.
6. Seal.
7. Writs, etc., to issue in name of the Crown and under Seal.
8. Appointment of officers.

Admission of Advocates, Vakeels and Attorneys.

9. Powers of High Court in admitting Advocates, Vakeels and Attorneys.
10. In making rules for the qualifications, etc., of Advocates, Vakeels and Attorneys.

Civil Jurisdiction of the High Court.

15. Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction.

Criminal Jurisdiction.

22. Ordinary original jurisdiction of the High Court.
23. Jurisdiction as to persons.
24. Extraordinary original criminal jurisdiction.
25. No appeal from High Court exercising original jurisdiction.
26. High Court to review on certificate of the Advocate-General.
27. Appeals from Criminal Courts in the Provinces.
28. Hearing of referred cases, and revision of criminal trials.
29. High Court may direct the transfer of a case from one Court to another.

Criminal Law.

30. Offenders to be punished under Indian Penal Code.

Exercise of jurisdiction elsewhere than at the ordinary place of sitting of the High Court.

31. Judges may be authorised to sit in any places by way of circuit or special commission.

Admiralty and Vice-Admiralty Jurisdiction.

33. Criminal,

Letters Patent (Bombay)—(Concluded).

SECTIONS.

Powers of Single Judges and Division Courts.

36. Single Judges and Division Courts.

Criminal Procedure.

38. Regulation of proceedings.

Appeals to Privy Council.

39. Power to appeal.

40. Appeal from interlocutory judgments.

41. Appeal of criminal cases, etc.

42. Rule as to transmission of copies of evidence and other documents.

Calls for Records, etc., by the Government.

43. High Court to comply with requisition from Government for records, etc.

44. Powers of Indian Legislature preserved.

45. Provisions of former Letters Patent inconsistent with these Letters Patent to be void.

Letters Patent (Calcutta)

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1. Revocation of Letters Patent of 1862.

2. High Court at Fort William to be continued.

3. Judges of the said High Court to be continued.

4. Clerks, etc., of the said High Court to be continued.

5. Declaration to be made by Judges.

6. Seal.

7. Writs, etc., to issue in name of the Crown and under Seal.

8. Appointment of officers.

Admission of Advocates, Vakeels and Attorneys.

9. Powers of High Court in admitting Advocates, Vakeels and Attorneys.

10. In making rules for the qualifications, etc., of Advocates, Vakeels and Attorneys.

Civil Jurisdiction of the High Court.

15. Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction.

Criminal Jurisdiction.

22. Ordinary original jurisdiction of the High Court.

23. Jurisdiction as to persons.

24. Extraordinary original criminal jurisdiction.

25. No appeal from High Court exercising original jurisdiction.

26. High Court to review on certificate of the Advocate-General.

27. Appeals from Criminal Courts in the Provinces.

28. Hearing of referred cases and revision of criminal trials.

29. High Court may direct the transfer of a case from one Court to another.

Criminal Law.

30. Offenders to be punished under Indian Penal Code.

Exercise of Jurisdiction elsewhere than at the ordinary place of sitting of the High Court.

31. Judges may be authorised to sit in any places by way of circuit or special commission.

Admiralty and Vice-Admiralty Jurisdiction.

33. Criminal.

Powers of Single Judges and Division Courts.

36. Single Judges and Division Courts.

Criminal Procedure.

38. Regulation of proceedings.

Appeals to Privy Council.

39. Power to appeal.

40. Appeal from interlocutory judgment.

41. Appeal in criminal cases, etc.

42. Rule as to transmission of copies of evidence and other documents.

Letters Patent (Calcutta)—(Concluded).

SECTIONS.

Calls for Records, etc., by the Government.

43. High Court to comply with requisition from Government for records, etc.
44. Powers of Indian Legislature preserved.
45. Provisions of former Letters Patent inconsistent with these Letters Patent to be void.

Letters Patent (Calcutta) Amendment

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Letters Patent (Madras)

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1. Revocation of Letters Patent of 1862.
2. High Court at Madras to be continued.
3. Judges of the said High Court to be continued.
4. Clerks, etc., of the said High Court to be continued.
5. Declaration to be made by Judges.
6. Seal.
7. Writs, etc., to issue in name of the Crown, and under seal.
8. Appointment of officers.

Admission of Advocates, Vakeels and Attorneys.

9. Powers of High Court in admitting Advocates, Vakeels and Attorneys.
10. In making rules for the qualifications, etc., of Advocates, Vakeels and Attorneys,

Civil Jurisdiction of the High Court.

15. Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction.

Criminal Jurisdiction.

22. Ordinary original jurisdiction of the High Court.
23. Jurisdiction as to persons.
24. Extraordinary original Criminal jurisdiction.
25. No appeal from High Court exercising original jurisdiction. Court may reserve points of law.
26. High Court to review on certificate of the Advocate-General.
27. Appeals from Criminal Courts in the Provinces.
28. Hearing of referred cases and revision of Criminal trials.
29. High Court may direct the transfer of a case from one Court to another.

Criminal Law.

30. Offenders to be punished under Indian Penal Code.

Exercise of jurisdiction elsewhere than at the ordinary place of sitting of the High Court.

31. Judges may be authorised to sit in any places by way of circuit or special commission.

Admiralty and Vice-Admiralty Jurisdiction.

33. Criminal.

Powers of Single Judges and Division Courts.

36. Single Judges and Division Courts.

Criminal Procedure.

38. Regulation of proceedings.

Appeals to Privy Council.

39. Power to appeal.
40. Appeal from interlocutory judgments.
41. Appeal in criminal cases, etc.
42. Rule as to transmission of copies of evidence and other documents.

Calls for Records, etc., by the Government.

43. High Court to comply with requisition from Government for records, etc.
44. Powers of Indian Legislature preserved.
45. Provisions of former Letters Patent inconsistent with these Letters Patent, to be void.

Letters Patent (Madras) Amendment

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1. Establishment of High Court at Patna.
2. Constitution and first Judges of the High Court
3. Declaration to be made by Judges.
4. Seal.
5. Writs, etc., to issue in name of the Crown, and under seal.
6. Appointment of officers.

Admission of Advocates, Vakeels and Attorneys.

7. Powers of High Court in admitting Advocates, Vakeels and Attorneys.
8. Powers of High Court in making rules for the qualifications, etc., of Advocates, Vakeels and Attorneys.

Civil Jurisdiction of the High Court.

10. Appeal to the High Court from Judges of the Court.

Criminal Jurisdiction.

15. Ordinary original criminal jurisdiction of the High Court.
16. Jurisdictions as to persons.
17. Extraordinary original criminal jurisdiction.
18. No appeal from High Court exercising original jurisdiction.
19. High Court to review cases on points of law reserved by one or more Judges of the High Court.
20. Appeals from other Criminal Courts in the Province of Bihar and Orissa.
21. Hearing of referred cases, and revision of criminal trials.
22. High Court may direct the transfer of a case from one Court to another.

Criminal Law.

23. Offenders to be punished under Indian Penal Code.

Admiralty Jurisdiction.

25. Criminal.

Powers of Single Judges and Division Courts.

28. Single Judges and Division Courts.

Criminal Procedure.

30. Regulation of proceedings.

Appeals to Privy Council.

31. Power to appeal in civil cases.
32. Appeal from interlocutory judgments.
33. Appeal in criminal cases.
34. Rules as to transmission of copies of evidence and other documents.

Exercise of Jurisdiction elsewhere than at the usual place of sitting of the High Court.

35. Judges to visit Orissa by way of circuit.
36. Special commissions and circuits.
37. Proceedings of Judges on special commission or circuit.

Delegation of Duties to Officers.

38. Power to delegate duties.

Cessation of jurisdiction of the High Court of Judicature at Fort William in Bengal.

39. Cessation of jurisdiction of the High Court of Judicature at Fort William over the Province of Bihar and Orissa.

Calls for Records, etc., by the Government.

40. High Court to comply with requisitions from Government for records, etc.
41. Powers of Indian Legislatures preserved.

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Preliminary.

1. Short title and extent.
2. Definitions.
3. Companies to which Act applies.

Life Assurance Companies Act, 1912—(Concluded).

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4. Deposit.

Accounts and Documents.

5. Separation of funds.
6. Appropriation of life assurance fund.
7. Accounts and balance-sheets.
8. Actuarial report and abstract.
9. Actuarial abstract in case of mutual company.
10. Statement of life assurance business.
11. Deposit of accounts, etc., with Governor General in Council.
12. Deposit of report.
13. Exemption from certain provisions of Act VI of 1882.
14. Right of shareholders, etc., to copies of accounts, etc.
15. Audit of accounts.
16. List of shareholders.
17. Deed of settlement.
18. Publication of authorized as well as subscribed and paid-up capital.
19. Requirements as to companies established outside British India.

Amalgamation or Transfer.

20. Amalgamation or transfer.
21. Statement in case of amalgamation or transfer.

Winding up.

22. Special provisions as to winding up of assurance companies.
23. Winding up of subsidiary companies.
24. Valuation of annuities and policies.
25. Rules of valuation.
26. Power to Court to reduce contracts.

Special Provisions relating to Accounts and Documents.

27. Custody and inspection of documents deposited with Governor General in Council.
28. Accounts, etc., to be published.
29. Evidence of documents.
30. Evidence of copies of documents.
31. Alteration of forms.

Companies carrying on business in the United Kingdom.

32. Certain companies may apply to be declared companies which carry on life assurance business in the United Kingdom.
33. Application of the Act to companies which carry on Life Assurance business in the United Kingdom.

Penalties and Procedure.

34. Penalty for non-compliance with Act.
35. Penalty for falsifying statements, etc.
36. Cognizance of offences.

Miscellaneous.

37. Appointment of inspectors.
38. Service of notices.
39. Powers to make rules.
40. Power of Governor General in Council to delegate to local Governments the powers conferred by this Act.
41. Power of Governor General in Council to exempt from the provisions of the Act.
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1. Short title, extent and commencement.

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3. Dismissal of suits, etc., instituted, etc., after period of limitation.
4. Where Court is closed when period expires.
5. Extension of period in certain cases.

PART III—COMPUTATION OF PERIOD OF LIMITATION.

12. Exclusion of time in legal proceedings.
18. Effect of fraud.

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Lunacy Act, 1912

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1. Short title and extent.
2. Savings.
3. Definitions.

PART II—RECEPTION, CARE AND TREATMENT OF LUNATICS.

CHAPTER II—RECEPTION OF LUNATICS

4. Reception of persons in asylum.

Reception orders on petition.

5. Application for reception order.
6. Application by whom to be presented.
7. Procedure upon petition for reception order.
8. Detention of alleged lunatic pending inquiry.
9. Consideration of petition.
10. Order.
11. Further provisions as to reception orders on petition.
- 11-A. Reception order in case of lunatics from foreign States in India.

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12. Reception order in case of lunatic soldier.
13. Powers and duties of police in respect of wandering or dangerous lunatics and lunatics cruelly treated or not under proper care and control.
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15. Order in case of lunatic cruelly treated or not under proper care and control.
16. Detention of alleged lunatic pending report by medical officer.
17. Commissioner of Police, etc., to act in the Presidency-town,

Further provisions as to reception orders and medical certificates.

18. Medical certificates.
19. Time and manner of medical examination of lunatic.
20. Authority for reception.
21. Copy of reception order to be sent to person in charge of asylum.
22. Restriction as to asylums into which reception orders may direct admission.

Detention of lunatics pending removal to asylum.

23. Detention of lunatics pending removal to asylum.

Reception and detention of criminal lunatics.

24. Reception and detention of criminal lunatics.

Reception after inquisition.

25. Reception after inquisition.
26. Order for payment of cost of maintenance of lunatic.

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27. Amendment of order or certificate.

CHAPTER III—CARE AND TREATMENT—Visitors.

28. Appointment of visitors.
29. Monthly inspection by visitors.
30. Inspection of criminal lunatics by Inspector-General or visitors.

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Discharge of lunatics.

31. Order of discharge from asylum by visitors.
32. Discharge of lunatics in other cases and of European military lunatics.
33. Order of discharge on undertaking of relative for due care of the lunatic.
34. Discharge of person subsequently found on inquisition not to be of unsound mind.

Removal of lunatics.

35. Removal of lunatics and criminal lunatics.

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36. Order to justify detention and re-capture after escape.

PART III—JUDICIAL INQUISITION AS TO LUNACY.

CHAPTER IV—PROCEEDINGS IN LUNACY IN PRESIDENCY-TOWNS—*Inquisition.*

37. Jurisdiction in lunacy in Presidency-towns.
38. Court may order inquisition as to persons alleged to be insane.
39. Application by whom to be made.
40. Notice of time and place of inquisition.
41. Powers of Court in respect of attendance and examination of lunatic.
42. Rules respecting attendance and examination of females alleged to be lunatic.
43. Power to direct District Court to make inquisition in certain cases.
44. Amendment of finding of District Court if defective or insufficient in form.
45. Proceedings on finding of Court.

Judicial powers over person and estate of lunatic.

46. Custody of lunatics and management of their estates.
47. Powers of manager in respect of management of lunatic's estate.
48. Power to make order concerning any matter connected with the lunacy.

Management and administration.

49. Power to dispose of lunatic's property for certain purposes.
50. Execution of conveyances and powers by manager under order of Court.
51. Court may order performance of contract.
52. Dissolution and disposal of property of partnership on a member becoming lunatic.
53. Disposal of business premises.
54. Manager may dispose of lease.
55. Assumption of charge by Court of Wards of land belonging to a lunatic in certain cases.
56. Power to apply property for lunatic's maintenance without appointing manager in certain cases.

Vesting orders.

57. Power to order transfer of stock belonging to lunatic in certain cases.
58. Power to order transfer of stock of lunatic residing out of British India and the United Kingdom.

General.

59. Power to apply property for lunatic's maintenance in case of temporary lunacy.
60. Proceedings in lunacy to cease or to be set aside if Court finds that the unsoundness of mind has ceased.
61. Power of Court to make rules.

CHAPTER V—PROCEEDINGS IN LUNACY OUTSIDE PRESIDENCY-TOWNS—*Inquisition.*

62. Power of District Court to institute inquisition as to persons alleged to be lunatic.
63. Application by whom to be made.
64. Regulation of proceedings of District Courts.
65. Inquisition by District Court and finding thereon.
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Lunacy Act, 1912—(Concluded).**SECTIONS.***Judicial powers over person and estate of lunatic.*

- 67. Custody of lunatics and management of their estates.
- 68. Court of Wards to be authorised in certain cases to take charge of estate of lunatic.
- 69. Power to direct Collector to take charge of person and estate of lunatic in certain cases.
- 70. Control over proceedings of Collector.
- 71. Power of District Court to appoint guardian and manager and take security from manager.
- 72. Restriction on appointment of legal heir of lunatic to be guardian of his person.
- 73. Remuneration of managers and guardians.
- 74. Duties of guardian.
- 75. Powers of manager.
- 76. Manager to furnish inventory and annual accounts.
- 77. Proceeding if accuracy of inventory or accounts is impugned.
- 78. Payment into public treasury and investment of proceeds of estate.
- 79. Relative may sue for an account.
- 80. Removal of managers and guardians.
- 81. Penalty on manager for refusing to deliver accounts or property.
- 82. Proceedings in lunacy to cease or to be set aside if Court finds that the unsoundness of mind has ceased.
- 83. Appeals.

PART IV—MISCELLANEOUS.**CHAPTER VI—ESTABLISHMENT OF ASYLUMS.**

- 84. Local Government may establish or license the establishment of asylums.
- 85. Provision for admission of lunatics in asylums outside a province.

CHAPTER VII—EXPENSES OF LUNATICS.

- 86. Payment of cost of maintenance in licensed asylums in certain cases by Government.
- 87. Application of property in the possession of a lunatic found wandering.
- 88. Application to Civil Court for order for the payment of cost of maintenance out of the lunatic's estate, or by person bound to maintain him.
- 89. Order of Court and enforcement thereof.
- 90. Saving of liability of relatives to maintain lunatic.

CHAPTER VIII—RULES.

- 91. Power of Local Government to make rules.
- 92. Publication of rules.

CHAPTER IX—SUPPLEMENTAL PROVISIONS.

- 93. Penalty for improper reception or detention of lunatic.
- 94. Provision as to bonds.
- 95. Pension of lunatic payable by Government.
- 96. Use of forms in Schedule.
- 97. Protection to persons acting under Act.
- 98. Power to give effect to warrants and orders of certain Courts outside British India.
- 99. Power to make rules for reception of lunatics received from outside British India.
- 100. Orders under repealed Acts.
- 101. [*Repealed.*]

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- 1. Short title and extent.
- 2. Definitions.
- 3. Imposition of coast-light dues.
- 4. Collection of coast-light dues and grant of receipt therefor.
- 5. Master to report arrival of vessel.
- 6. Ascertainment of tonnage.
- 7. Recovery of coast-light dues, expenses and costs.
- 8. No port-clearance to be granted until coast-light dues, expenses and costs are paid.

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9. Master to specify on demand ports to or from which vessel is bound.
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- 15. Record of grants, cancellations, etc., of certificates.
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- 18. Licenses to procure seamen.
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- 20. Penalty for receiving remuneration from seamen for shipping them.
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- 36. Regulation of advances and advance-notes.
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- 67. Medicines, etc., to be provided and kept on board certain ships.
- 68. Masters to keep weights and measures on board.
- 69. Expense of medical attendance and subsistence in case of illness how to be defrayed.
- 70. Place to be appropriated.
- 71. Shipping-master, etc., may enter on board any ship and inspect provisions, etc.

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- 78. Penalty for solicitations by lodging-house-keepers.

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- 79. Penalty for misconduct endangering ship, or life or limb
- 80. Admiralty Court in India may in certain cases remove master and appoint a new master.
- 81 & 82. [*Repealed.*]
- 83. Offences of seamen and apprentices, and their punishments.
- 84. Entry of offences to be made in official log, and to be read over, or a copy given, to the offender, and his reply, if any, to be also entered.
- 85. Seamen whom masters of ships are compelled to convey, and persons going in ships without leave, to be subject to penalties for breach of discipline.
- 86. Master or owner may apprehend deserters without warrant.
- 87. Deserters may be sent on board in lieu of being imprisoned.
- 88. Seamen imprisoned for desertion or breach of discipline may be sent on board before termination of sentence.
- 89. Entries and certificates of desertion abroad to be copied, sent home, and admitted in evidence.
- 90. Facilities for proving desertion so far as concerns forfeiture of wages.
- 91. Costs of procuring imprisonment may, to the extent of thirty rupees, be deducted from wages.
- 92. Amount of forfeiture how to be ascertained when seamen contract for the voyage.
- 93. Application of forfeitures.
- 94. Questions of forfeitures may be decided in suits for wages.
- 95. Penalty for false statement as to last ship or name.
- 96. Fines to be deducted from wages and paid to shipping-master.
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- 99. On change of masters, documents hereby required to be handed over to successor
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- 103. Official logs to be kept in forms sanctioned by Local Government.
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- 105. Entries required in official log.
- 106. Entries how to be signed.
- 107. Penalties in respect of official logs.
- 108. Entries in official logs to be received in evidence.
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- 111. Depositions to be received in evidence when witnesses cannot be produced.
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- 115. Engagements between masters of foreign ships and lascars or native seamen.
- 116. Fees payable in respect of such engagements.
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- 2. Interpretation-clause.
- 3. Evidence of distress of seamen. Penalty for refusing to accept distressed seamen.
- 4. Discharge of seamen.
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- 7. Power to deal with imprisoned seaman in accordance with section 88, Act I of 1859.
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- 2. Interpretation-clause.

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- 5. Every person sending unseaworthy ship to sea liable to penalty.

Implied Condition of Seaworthiness in Contract of Service.

- 6. Obligation of owner to crew with respect to seaworthiness.

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- 7. Provisional detention by Local Government.
- 8. Power to appoint surveyor.
- 9. Option to owner or master of appointing assessor to accompany surveyor.
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- 11. Detaining-officers.
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42. Penalty on master for having misleading marks.
43. Saving of ships marked in the United Kingdom.

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45. Who may enforce detention of ship.
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- 62. Wages and expenses incurred in respect of distressed seamen to be charged on ship to which they belong in certain cases.
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- 64. Local Government may authorize persons to recover same.
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- 66. What shall be evidence of distress and expenses incurred.
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- 81. Appointment of inspectors of lights and fog-signals.
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- 2. Repeal of enactments.
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- 12. Powers of Courts as to evidence and regulation of proceedings.
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37. Provisions as to examination, etc., of masters not to apply to certain ships.
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2. Definition.
3. Prohibition of making by private persons of pieces of metal to be used as money.
4. Penalty for unlawful making, issue or possession of such pieces.
5. Cognizance of offences under the last foregoing section.
6. Application of certain of the foregoing provisions of this Act to importation of pieces of metal for use as money.
7. [*Repealed.*]
8. Prohibition of receipt by local authorities and railways as money of metal which is not coin.
9. Amendment of section 28 of the Indian Penal Code.

Mines Act, 1901

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Preliminary.

1. Short title, extent and commencement.
2. Saving of Regulation XII, 1887.
3. Definitions.

Inspectors.

4. Inspectors.
5. Powers of District Magistrate.
6. Powers of Inspectors of Mines.
7. Facilities to be afforded to Inspectors.
8. Information acquired to be deemed official secrets within meaning of Act XV, 1889.

Mines Act, 1901—(Concluded).**SECTIONS.***Mining Boards and Committees.*

9. Mining Boards.
10. Committees.
11. Powers of Mining Boards and Committees.
12. Recovery of expenses.

Mining Operations and Duties and Responsibilities of Owners, Agents and Managers.

13. Managers.
14. Duties and responsibilities of owners, agents and managers.
15. Powers of Inspector when causes of danger not expressly provided against exist or when employment of women or children is dangerous.
16. Notice to be given of mining operations.
17. Notice to be given of accidents.
18. Power for the Government to order formal inquiry into accidents.
19. Publication of reports.

Rules.

20. Power for Government to make rules.

Special Rules.

21. Power for owners, etc., to make special rules.

Penalties.

22. Penalties for offences.

Miscellaneous.

23. Prosecution of owner, agent or manager.
24. Limitation of prosecutions.
25. Cognizance of offences.
26. Reference to Mining Board or Committee in lieu of prosecution in certain cases.
27. Decision of question whether a mine is under this Act.
28. Evidence of age.
29. Power to exempt from operation of Act.
30. Power to alter or rescind orders.
31. Application of Act to Crown mines.
32. Exercise of power by Governor General in Council.
33. *Temporary Provision. [Repealed.]*

Motor Spirit (Duties) Act, 1917

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1. Short title, extent and duration.
2. Definitions.
3. Imposition of excise duty on motor spirit manufactured in British India.
4. Issue of motor spirit after commencement of Act.
5. Application of Sea Customs Act and rule-making power.

Motor Vehicles Act, 1914

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PART I—PRELIMINARY.

1. Short title, extent and commencement.
2. Definitions.

PART II—PROVISIONS OF GENERAL APPLICATION.

3. Prohibition of driving motor vehicles by persons under 18.
4. Duty to stop vehicle for regulating traffic and in case of accident.
5. Reckless driving.

PART III—LICENSING AND CONTROL.

6. Licensing of drivers.
7. Transfer of license.
8. Production of license.
9. Extent of validity of license to drive.
10. Registration of motor vehicles.
11. Power of Local Government to make rules.
12. Posting of notices.
13. Power to Local Government to exclude areas or motor vehicles from this Part

Motor Vehicles Act, 1914—(Concluded).

SECTIONS.

**PART IV—MOTOR VEHICLES TEMPORARILY LEAVING OR VISITING
BRITISH INDIA.**

14. Power of Governor General in Council to make rules.
15. Saving.

PART V—MISCELLANEOUS.

16. Penalties.
17. Cognizance of offences.
18. Cancellation and suspension of license and disqualification for obtaining license.
19. Repeals.

Native Passenger Ships Act, 1887

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CHAPTER I—PRELIMINARY.

1. Title.
2. Extent and application.
3. Commencement.
4. Repeal.
5. Definitions.

CHAPTER II—RULES FOR ALL VOYAGES.

6. Ships to sail only from places appointed by the Government.
7. Notice to be given of day of sailing.
8. Power to enter on and inspect ship.
9. Ship not to sail without two certificates.
10. Contents of certificate A.
11. Contents of certificate B.
12. Grant of certificates.
13. Substitute for certificate A.
14. Survey of ship.
15. Discretion as to grant of certificate.
16. Copy of certificates to be exhibited.
17. Supply by passengers of their own food.

CHAPTER III—RULES FOR SHORT VOYAGES.

18. Space to be available for passengers.
19. Ship taking additional passengers at intermediate place.
20. Deaths on voyage.

CHAPTER IV—RULES FOR LONG VOYAGES.

21. Space to be available for passengers.
22. Statements concerning passengers.
23. Deaths on voyage.
24. Ship taking additional passengers at intermediate place.
25. Certain ships to be propelled by steam.
26. Certain ships to carry medical officer.
27. Ships carrying passengers to or from port in Red Sea to touch at Aden.
28. Bill of health at Aden.
29. Bond where ship clears for port in Red Sea.
30. Power for Local Government to direct medical inspection of passengers.

CHAPTER V—PENALTIES.

31. Penalty for ship unlawfully departing or receiving passengers on board.
32. Penalty for opposing entry on or inspection of ships.
33. Penalty for not exhibiting copy of certificates.
34. Penalty for not complying with requirements as to statements concerning passengers and certain other matters.
35. Penalty for fraudulent alteration in ship after certificate obtained.
36. Penalty for failing to supply passengers with prescribed provisions.
37. Penalty for having excessive number of passengers on board.
38. Penalty for bringing passengers from foreign port in excess of authorized number.
39. Penalty for landing passenger at a place other than that at which he has contracted to land.
40. Penalty for making voyage in contravention of contract with passengers.
41. Penalty on master and owner of certain ships not propelled by steam.

Native Passenger Ships Act, 1887—(Concluded).**SECTIONS.**

42. Penalty on master of certain ships sailing without medical officer.
43. Penalty for not obtaining bill of health at Aden.
44. Penalty on master or medical officer of certain ships disobeying rules.
45. Penalty on master receiving passenger in contravention of section 30.

Procedure.

46. Adjudication of offences, and levy of fine by distress on ship.
47. Jurisdiction.
48. Authority to institute proceedings for penalties.
49. Application of fines.
50. Depositions of absent witnesses.

CHAPTER VI—SUPPLEMENTAL PROVISIONS.

51. Information to be sent to ports of embarkation and discharge.
52. Report of Consul.
53. Power for Governor General in Council and Local Government to make rules.
54. Appointment of officers.
55. Power to declare what shall be deemed "seasons of fair weather," and "long voyages."
56. Power to prescribe space to be available for passengers.
57. Power to exempt ship from provisions of Act.

Newspapers (Incitements to Offences) Act, 1908 ... 851

1. Short title and extent.
2. Definitions.
3. Power to forfeit printing presses in certain cases.
4. Power to seize.
5. Appeal.
6. Bar of other proceedings.
7. Power to annul declaration under Press and Registration of Books Act, 1867.
8. Penalty.
9. Application of Code of Criminal Procedure.
10. Operation of other laws not barred.

Non-ferrous Metal Industry Act, 1918 ... 853

1. Short title, extent, commencement and duration.
2. Definitions.
3. Metals and ores to which the Act applies.
4. Prohibition against dealing in certain metals without a license.
5. Power to require information and inspection of documents.
6. Provisions as to share warrants to bearer.
7. Provisions as to declarations by shareholders.
8. Information obtained under the Act not to be disclosed.
9. Penalties.
10. Cognizance of offences against the Act.
11. Power to make rules.

Oaths Act, 1873 ... 858*I—Preliminary.*

1. Short title. Local extent.
2. [*Repealed.*]
3. Saving of certain oaths and affirmations.

II—Authority to administer Oaths and Affirmations.

4. Authority to administer oaths and affirmations.

III—Persons by whom Oaths or Affirmations must be made.

5. Oaths or affirmations to be made by—witnesses; interpreters; jurors.
6. Affirmation by Natives or by persons objecting to oaths.

IV—Forms of Oaths and Affirmations.

7. Forms of oaths and affirmations.
8. Power of Court to tender certain oaths.
9. Court may ask party or witness whether he will make oath proposed by opposite party.

Oaths Act, 1873—(Concluded).

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10. Administration of oath if accepted.
11. Evidence conclusive as against person offering to be bound.
12. Procedure in case of refusal to make oath.

V—Miscellaneous.

13. Proceedings and evidence not invalidated by omission of oath or irregularity.
14. Persons giving evidence bound to state the truth.
15. Amendment of Penal Code, sections 178 and 181.
16. Official oaths abolished.

Obstructions in Fairways Act, 1881

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1. Short title. Commencement.
2. Local Government empowered to remove or destroy obstruction in fairway.
3. Government entitled to expenses incurred in removing obstruction.
4. Notice of removal to be given by Local Government.
5. Things removed may, in certain cases, be sold.
6. Proceeds how applied.
7. "Vessel" to include tackle, cargo, etc.
8. Power to make rules to regulate and prohibit the placing of obstructions in fairways.
9. Penalty for breach of such rules.
10. Compensation payable in certain cases for damage caused under this Act.
11. Certain action of the Government previous to passing of this Act to be deemed to have been taken hereunder.
12. Saving of other powers possessed by Government.

Official Secrets Act, 1889

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1. Title, extent and application.
2. Definitions.
3. Disclosure of information.
4. Breach of official trust.
5. Certain offences under Act declared cognizable.
6. Procedure after arrest on charge of certain offences punishable under Act.
7. Restriction on trial of offences.

Opium Act, 1878

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1. Short title. Commencement.
2. [*Repealed.*]
3. Interpretation-clause.
4. Prohibition of poppy cultivation and possession, etc., of opium.
5. Power to make rules to permit such matters.
6. Duty on opium imported by land.
7. Warehousing opium.
8. Power to make rules relating to warehouses.
9. Penalty for illegal cultivation of poppy, etc.
10. Presumption in prosecutions under section 9.
11. Confiscation of opium
12. Order of confiscation by whom to be made.
13. Power to make rules regarding disposal of things confiscated, and rewards.
14. Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.
15. Power to seize opium in open places.
16. Searches how made.
17. Officers to assist each other.
18. Vexatious entries, searches, seizures and arrests.
19. Issue of warrants.
20. Disposal of person arrested or thing seized.
21. Report of arrests and seizures.
22. Procedure in case of illegal poppy cultivation.
23. Recovery of arrears of fees, duties, etc.
24. Farmer may apply to Collector or other officer to recover amount due to him by licensee.
25. Recovery of penalties due under bond.

Paper Currency Act, 1910 ... 878**SECTIONS.**

1. Short title and extent.
2. Definition.
26. Prohibition of issue of private bills or notes payable to bearer on demand.
27. Penalty for issuing such bills or notes and institution of prosecutions.

Penal Servitude Act, 1855 ... 880

1. No European or American to be sentenced to transportation.
2. Terms of penal servitude instead of the present terms of transportation.
3. Discretion of Courts as to alternative punishments.
4. Effect of pardon granted upon condition of penal servitude.
- 5—12. [*Repealed.*]
13. Act not to affect the provisions of certain English Statutes.
14. Sentence when proof that a person is a European or an American.
15. Interpretation-clause.
16. [*Repealed.*]

Petroleum Act, 1899 ... 882*Preliminary.*

1. Short title, commencement and extent.
2. Definitions.
3. Matters supplemental to definitions.
4. Power to vary tests and prescribe new tests.

Dangerous Petroleum.

5. Dangerous petroleum in quantities exceeding forty gallons.
6. Dangerous petroleum in quantities not exceeding forty gallons.
7. Vessels containing dangerous petroleum to be labelled.

Petroleum generally.

8. Power for Governor General in Council to make rules.
9. Power for Local Government to make rules.
10. Procedure after petroleum has been discharged or landed.
11. Possession and transport of petroleum.
12. Power to inspect and require dealer to sell samples.
13. Notice to be given when officer proposes to test samples.
14. Certificate as to result of testing.

Penalties.

15. Penalty for illegal importation, possession or transport of petroleum or for refusal to comply with section 12.
16. Penalty for contravention of section 7.
17. Confiscation of petroleum.
18. Jurisdiction.

Test-apparatus.

19. Model test apparatus.
20. Verification of test-apparatus.

Miscellaneous.

21. Power to exempt petroleum from operation of Act.
22. Power to apply Act to other substances.
23. Power to limit operation of enactments relating to possession or transport of petroleum in municipalities.
24. Previous publication, etc., of rules.
25. Repeal.

Pilgrim Ships Act, 1895 ... 897*Preliminary.*

1. Title.
2. Extent and application.
3. Commencement.
4. Repeal of Act X, 1867, so far as regards pilgrim ships.
5. Definitions.
6. All passengers on pilgrim ships to be deemed pilgrims.

Pilgrim Ships Act, 1895—(Continued).**SECTIONS.***Rules for Voyages of Pilgrim Ships.*

7. Pilgrim ships to sail only from places appointed by the Government.
8. Notice to be given of time of sailing.
9. Power to enter on and inspect pilgrim ship.
10. Pilgrim ship not to sail without two certificates.
11. Contents of certificate A.
12. Contents of certificate B.
13. Grant of certificates.
14. Substitute for certificate A.
15. Survey of pilgrim ship.
16. Discretion as to grant of certificate.
17. Copy of certificates to be exhibited.
18. Supply by pilgrims of their own food.
19. Space to be provided for pilgrims.
20. Disposal of pilgrims' baggage.
21. Hospital accommodation.
22. Statement concerning pilgrims to be delivered before ship departs.
23. Deaths on voyage.
24. Pilgrim ship taking additional pilgrims at intermediate place.
25. Statement concerning pilgrims to be delivered before pilgrims disembark British India.
26. Pilgrim ships to be propelled principally by steam and to be of certain tonnage and steam-power.
27. Certain pilgrim ships to carry medical officers and attendants.
28. Medical officers' diaries and reports.
29. Pilgrim ships to touch at Aden on the outward voyage.
30. When authority at Aden may refuse to let ship leave.
31. Bond where pilgrim ship proceeds on outward voyage.
32. Medical inspection and permission required before embarkation of pilgrims.
33. Medical inspection after embarkation in certain cases.
34. Medical inspection of women.
35. Issue and production of tickets and refund of passage-money.
36. Sanitary taxes payable by master of pilgrim ship.

Penalties.

37. Penalty on master or owner for pilgrim ship unlawfully departing or receiving pilgrims on board.
38. Penalty for opposing entry on or inspection of pilgrim ship.
39. Penalty on master or owner for not exhibiting copy of certificates.
40. Penalty on master for not complying with requirements as to statements concerning pilgrims and certain other matters.
41. Penalty on master for fraudulent alteration in pilgrim ship after certificate obtained.
42. Penalty on master for failing to supply pilgrims with prescribed provisions.
43. Penalty on master and owner for carrying pilgrims in excess of authorized number.
44. Penalty on master for landing pilgrim at a place other than that at which he has contracted to land.
45. Penalty on master and owner for making voyage in contravention of contract with pilgrims.
46. Penalty on master and owner of pilgrim ship not propelled principally by steam or of prescribed tonnage or steam-power.
47. Penalty on master of pilgrim ship sailing without medical officer or officers or attendants in contravention of section 27.
48. Penalty on master for not obtaining certificate at Aden on outward voyage.
49. Penalty on master receiving or keeping on board pilgrim or article in contravention of section 32 or 33.
50. Penalty on master or medical officer of pilgrim ship disobeying rules under this Act.

Procedure.

51. Adjudication of offences and levy of fine by distress of pilgrim ship.
52. Jurisdiction.
53. Authority to institute proceedings for penalties.

Pilgrim Ships Act, 1895—(Concluded).**SECTIONS.**

- 54. Application of fines.
- 55. Depositions of absent witnesses.

Supplemental.

- 56. Information to be sent to ports of embarkation and discharge.
- 57. Report of Consul.
- 58. Power for Governor General in Council and Local Government to make rules.
- 59. Temporary continuance of existing rules.
- 60. Appointment of officers.

Poisons Act, 1919

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- 1. Short title and extent.
- 2. Power of the Local Government to regulate possession for sale and sale of any poison.
- 3. Power to prohibit importation into British India of any poison except under license.
- 4. Power to regulate possession of any poison in certain areas.
- 5. Presumption as to specified poisons.
- 6. Penalty for unlawful importation, etc.
- 7. Power to issue search-warrants.
- 8. Rules.
- 9. Savings.
- 10. Repeal of Act I of 1904.

Police Act, 1881

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- 1. Interpretation-clause.
- 2. Constitution of the force.
- 3. Superintendence in the Local Government.
- 4. Inspector-General of Police, etc.
- 5. Powers of Inspector-General. Exercise of powers.
- 6. [Repealed.]
- 7. Appointment, dismissal, etc., of inferior officers.
- 8. Certificates to police-officers.
- 9. Police-officer not to resign without leave or two months' notice.
- 10. Police-officers not to engage in other employment.
- 11. [Repealed.]
- 12. Power of Inspector-General to make rules.
- 13. Additional police-officers employed at cost of individuals.
- 14. Appointment of additional force in the neighbourhood of railway and other works.
- 15. Quartering of additional police in disturbed or dangerous districts.
- 15-A. Awarding compensation to sufferers from misconduct of inhabitants or persons interested in land.
- 16. Recovery of moneys payable under sections 13, 14, 15 and 15-A. and disposal of same when recovered.
- 17. Special police-officers.
- 18. Powers of special police-officers.
- 19. Refusal to serve as special police-officers.
- 20. Authority to be exercised by police-officers.
- 21. Village-police-officers.
- Police-chaukidars in the Presidency of Fort William.
- 22. Police-officers always on duty and may be employed in any part of district.
- 23. Duties of police-officers.
- 24. Police-officers may lay information, etc.
- 25. Police-officers to take charge of unclaimed property and be subject to Magistrate's orders as to disposal.
- 26. Magistrate may detain property and issue proclamation.
- 27. Confiscation of property if no claimant appears.
- 28. Persons refusing to deliver up certificate, etc., on ceasing to be Police-officers.
- 29. Penalties for neglect of duty, etc.
- 30. Regulation of public assemblies and processions and licensing of same.
- 30-A. Powers with regard to assemblies and processions violating conditions of license.
- 31. Police to keep order in public roads, etc.

Quarantine Act, 1870	... 1061
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SECTIONS.

1. Power to make quarantine rules.
2. Quarantine rules to be deemed rules under section 271 of Penal Code.

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CHAPTER I—PRELIMINARY.

1. Title, extent and commencement.
2. Repeal.
3. Definitions.

CHAPTER II—INSPECTION OF RAILWAYS.

4. Appointment and duties of Inspectors.
5. Powers of Inspectors.
6. Facilities to be afforded to Inspectors.

CHAPTER III—CONSTRUCTION AND MAINTENANCE OF WORKS.

13. Fences, screens, gates and bars.

CHAPTER IV—OPENING OF RAILWAYS.

16. Right to use locomotives.
18. Sanction of the Government a condition precedent to the opening of a railway.
19. Procedure in sanctioning the opening of a railway.
20. Application of the provisions of the three last foregoing sections to material alterations of a railway.
21. Exceptional provision.
22. Power to make rules with respect to the opening of railways.
24. Re-opening of a closed railway.

CHAPTER V—RAILWAY COMMISSIONS AND TRAFFIC FACILITIES.

36. Execution of order of Railway Commission and High Court.

CHAPTER VI—WORKING OF RAILWAYS—General.

47. General rules.
48. Disposal of differences between railways regarding conduct of joint traffic.
49. Returns.
54. Power for railway administrations to impose conditions for working traffic.
58. Requisitions for written accounts of description of goods.
59. Dangerous or offensive goods.
60. Exhibition to the public of authority for quoted rates.

Carriage of Passengers.

62. Communication between passengers and railway servants in charge of trains.
63. Maximum number of passengers for each compartment.
64. Reservation of compartments for females.
65. Exhibition of time-tables and tables of fares at stations.
68. Prohibition against travelling without pass or ticket.
69. Exhibition and surrender of passes and tickets.
70. Return and season tickets.
71. Power to refuse to carry person suffering from infectious or contagious disorder.

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83. Report of railway accidents.
84. Power to make rules regarding notices of, and enquiries into, accidents.
85. Submission of return of accidents.

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87. Penalty for default in compliance with requisition under section 13.
88. Penalty for contravention of section 16, 18, 19, 20, 21 or 24.
89. Penalty for not having certain documents kept or exhibited at stations under section 47, 54 or 65.
90. Penalty for not making rules as required by section 47.
91. Penalty for failure to comply with decision under section 48.
92. Penalty for delay in submitting returns under section 62 or 85.

Railways Act, 1890—(Concluded).

SECTIONS.

93. Penalty for neglect of provisions of section 58 or 63 with respect to carrying capacity of rolling-stock.
94. Penalty for failure to comply with requisition under section 62 for maintenance of means of communication between passengers and railway servants.
95. Penalty for failure to reserve compartments for females under section 64.
96. Penalty for omitting to give the notices of accidents required by section 83 and under section 84.
97. Recovery of penalties.
98. Alternative or supplementary character of remedies afforded by the foregoing provisions of this Chapter.

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99. Breach of duty imposed by section 60.
100. Drunkenness.
101. Endangering the safety of persons.
102. Compelling passengers to enter carriages already full.
103. Omission to give notice of accident.
104. Obstructing level-crossings.
105. False returns.

Other Offences.

106. Giving false account of goods.
107. Unlawfully bringing dangerous or offensive goods upon a railway.
108. Needlessly interfering with means of communication in a train.
109. Entering compartment reserved or already full or resisting entry into a compartment not full.
110. Smoking.
111. Defacing public notices.
112. Fraudulently travelling or attempting to travel without proper pass or ticket.
113. Travelling without pass or ticket or with insufficient pass or ticket or beyond authorised distance.
114. Transferring any half of return ticket.
115. Disposal of fines under the two last foregoing sections.
116. Altering or defacing pass or ticket.
117. Being or suffering person to travel on railway with infectious or contagious disorder.
118. Entering carriage in motion, or otherwise improperly travelling on a railway.
119. Entering carriage or other place reserved for females.
120. Drunkenness or nuisance on a railway.
121. Obstructing railway servant in his duty.
122. Trespass and refusal to desist from trespass.
123. Disobedience of omnibus driver to directions of railway servants.
124. Opening or not properly shutting gates.
125. Cattle-trespass.
126. Maliciously wrecking or attempting to wreck a train.
127. Maliciously hurting or attempting to hurt persons travelling by railway.
128. Endangering safety of persons travelling by railway by wilful act or omission.
129. Endangering safety of persons travelling by railway by rash or negligent act or omission.
130. Special provision with respect to the commission by children of acts endangering safety of persons travelling by railway.
137. Railway servants to be public servant for the purposes of Chapter IX of the Indian Penal Code.
149. Amendment of the Indian Penal Code.

Reformatory Schools Act, 1897

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I—Preliminary.

1. Title, commencement and extent.
2. Repeal of Act V of 1876.
3. Section 399 of Act X of 1882 repealed on date fixed by a notification under section 1, sub-section (3).
4. Definitions.

Reformatory Schools Act, 1897—(Concluded).

SECTIONS.

II—Reformatory Schools.

5. Power to establish and discontinue Reformatory Schools.
6. Requisites of schools.
7. Inspection of Reformatory Schools.
8. Power of Courts to direct youthful offenders to be sent to Reformatory Schools.
9. Procedure where Magistrate is not empowered to pass an order under section 8.
10. Power of Magistrates to direct boys under fifteen sentenced to imprisonment to be sent to Reformatory Schools.
11. Preliminary enquiry and finding as to age of youthful offender.
12. Government to determine Reformatory School to which such offenders shall be sent.
13. Persons found to be over eighteen years not to be detained in Reformatory Schools.
14. Discharge or removal by order of Government.
15. Power to Governor General in Council to direct use of Reformatories in one province for reception of youthful offenders from another.
16. Certain orders not subject to appeal or revision.

III—Management of Reformatory Schools.

17. Appointment of Superintendent and Committee of Visitors or Board of Management.
18. Superintendent may license youthful offenders to employers of labour.
19. Cancellation of license.
20. Determination of license.
21. Cancellation of license in case of ill treatment.
22. Superintendent to be deemed guardian of youthful offenders, Power to apprentice youthful offender.
23. Duties of Committee of Visitors.
24. Powers of Board of Management.
25. Power to appoint Trustees or other Managers of a school to be a Board of Management.
26. Power of Board to make rules.

IV—Offences in relation to Reformatory Schools.

27. Penalty for introduction or removal or supply of prohibited articles and communication with youthful offenders.
28. Penalty for abetting escape of youthful offender.
29. Arrest of escaped youthful offender.

V—Miscellaneous.

30. Application of Act XV of 1869 to youthful offenders detained in Reformatory Schools.
31. Power to deal in other ways with youthful offenders including girls.
32. Procedure when youthful offender under detention in a Reformatory School is again convicted and sentenced.

Registration Act, 1908

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PART I—PRELIMINARY.

1. Short title, extent and commencement.

PART III—OF REGISTRABLE DOCUMENTS.

19. Documents in language not understood by registering officer.
21. Description of property and maps or plans.

PART XIV—OF PENALTIES.

81. Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure.
82. Penalty for making false statements, delivering false copies or transactions, false personation, and abetment.
83. Registering officer may commence prosecutions.
84. Registering officers to be deemed public servants.

Registration of Ships Act, 1841

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1. Preamble. Ships to be registered. Certificate of registry.
2. Ports of registry.
3. Registrars.
4. Book of registry.
5. Declaration.
6. Further declaration by owners who attend.
7. Measurement to be made.
8. Certificate of surveying officer.
9. Measurement of tonnage for purpose of registry.
10. Measurement of tonnage for purpose other than registry.
11. Substitution of Governor General in Council for Board of Trade.
12. Marking of register tonnage on ship or vessel.
13. [*Repealed.*]
14. Registered tonnage to be repealed in every subsequent register.
15. Fraudulent use of certificate.
16. Change of master.
17. Name of ship.
18. Certificate of building.
19. Certificate lost or mislaid.
20. Detention of certificate.
21. Registration *de novo*.
22. Testimony of Registering-officers.
23. False declaration. Falsifying documents.
24. Ships of Native States.
25. Fees.
26. Ports to which ships belong.
27. Definition of "Local Government."

Registration of Ships Act, 1850

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1. [*Repealed.*]
2. Passes under Act X of 1841 to ships of allied Native States wherever built.
3. Registry of, and passes to, certain coasting vessels.
4. Fees for certificates of registry of such vessels.
5. Construction.

Reserve Forces Act, 1888

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1. Title and commencement.
2. Division of Reserve Forces into Active and Garrison Reserves.
3. Locality of service of Reserves.
4. Power to make rules for regulation of Reserve Forces.
5. Liability of Reserve Forces to Military law.
6. Punishment of certain offences by persons belonging to Reserve Forces.
7. Effect of Act on persons already in the Reserves.

Salt Act, 1882

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CHAPTER I—PRELIMINARY.

1. Short title. Commencement. Local extent. Power to extend Act.
2. Repeal of enactments.
3. Interpretation-clause.
4. Powers of Commissioner of Division by whom to be exercised.
5. Commissioner of Northern India Salt-revenue.

CHAPTER II—MANUFACTURE AND REFINING OF SALT AND SALTPETRE

6. Power of Governor General in Council—to regulate manufacture and refining of salt and saltpetre; to fix fees for licenses; to regulate the collection of duties; to regulate possession of salt in vicinity of places where saltpetre is manufactured; to regulate possession of salt in vicinity of places where salt is manufactured.

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- 8-A. Power to define zones and establish chains of posts.
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- 9. Penalties.
- 10. Punishment on second and subsequent convictions.
- 11. Charge by whom to be preferred. Limitation Jurisdiction.
- 12. Confiscation of articles in respect of which offence committed.
- 13. Power to levy additional duty as penalty.
- 14. Punishment for connivance at offences mentioned in section 9.

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- 15. Power to search places where article is manufactured under license.
- 16. Power to detain suspected person and to seize goods liable to confiscation.
- 17. Power to arrest.
- 18. Procedure of officer having reason to believe unlawful manufacture. Power to enter and search.
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- 20. Report of arrest, seizure and search.
- 21. Procedure in respect of articles seized.
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- 23. Procedure in respect of person arrested.
- 24. Officers required to assist Salt-revenue officers.
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- 26. Power to regulate seizures and disposal of things seized.

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- 27. Power to prohibit import and transit of salt.
- 28. Further matter for which Governor General in Council may make rules.
- 29. Publication of rules.
- 30. Power to confer powers of Assistant Commissioner and Salt-revenue officers.
- 31. [*Repealed.*]

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- 1. [*Repealed.*]
- 2. Interpretation-clause.
- 3. Notice of this Act to be given to keepers of sarais.
- 4. Registers of sarais to be kept.
- 5. Lodgers, etc., not to be received in sarais until registered.
- 6. Magistrate may refuse to register keeper not producing certificate of character.
- 7. Duties of keepers of sarais.
- 8. Power to order reports from keepers of sarais.
- 9. Power to shut up, secure, clear and clean deserted sarais.
- 10. Taking down or repairing ruinous sarais.
- 11. Sale of materials of ruinous sarais.
- 12. Penalty for permitting sarais to be filthy or overgrown.
- 13. Power for Local Government to make regulations.
- 14. Penalty for infringing Act or regulations.
- 15. Conviction for third offence to disqualify persons from keeping sarais.
- 16. Nothing in Act to apply to certain sarais.
- 17. Extent of Act.
- 18. Short title.

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- 1. Short title. Local extent.
- 2. [*Repealed.*]
- 3. Interpretation-clause.
- 4. Payment on death of depositor.
- 5. Payment to be a discharge.
- 6. Security for due administration.
- 7. Power to administer oath. Penalty for false statements.
- 8. Deposit when excluded in computing Court-fees.

Savings Banks (Government) Act, 1873—(Concluded).**SECTIONS.**

9. Act not to apply^a to deposits belonging to estates of European soldiers deserters.
10. Payment of deposits to minor or guardian.
11. Legalization of like payments heretofore made.
12. Payment of deposits belonging to lunatics.
13. Payment of married women's deposits.
14. Rules regulating certificates under section 8, and payments under section 10, 12 or 13.

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1. Short title. Local extent. Interpretation-clause.
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3. Notification of enactments in force in Scheduled Districts.
4. Effect of notification under section 3.
5. Power to extend enactments to Scheduled Districts.
- 5-A. Modification of enactments in their application to Scheduled Districts.
6. Appointment of officers and regulation of their procedure.
7. Continuance of existing rules and officers.
8. Settlement of questions as to boundary.
9. Place of imprisonment or transportation.
10. Extension to Satna strip of Acts relating to public gambling and pandhari-tax.
11. Saving of criminal jurisdiction over European British subjects, and saving of other laws.

Sea Customs Act, 1878

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1. Short title. Local extent. Commencement.
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3. Interpretation.
4. Agent of owner of goods to be deemed owner for certain purposes.
5. When ship's agent may act for Master.

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6. Appointment of Customs-officers. Suspension and dismissal of such officers.
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8. Performance of duties of Customs-collector, where no Custom-house.
9. Power to make rules.
10. Customs-officers exempted from service on jury or inquest or as assessors.

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11. Power to appoint Ports, Wharves and Custom-houses.
12. Power to declare places to be Ports for coasting-trade.
13. Power to declare that Foreign Ports shall be regarded as Customs-ports for certain purposes.
14. Power to declare Warehousing Ports.
15. Power to appoint public warehouses.
16. Power to license private warehouses.
17. Stations for Customs-officers to board and land.

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19. Power to prohibit or restrict importation or exportation of goods.
- 19-A. Detention and confiscation of goods whose importation is prohibited.

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23. General power to exempt from Customs-duties.
24. Baggage in actual use.
25. Re-imported articles of country-produce.
26. Excise duty on importation of certain country goods.

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- 27. Goods derelict and wreck.
- 28. Country provisions and stores may be shipped free of duty.
- 29. Owner to declare real value, etc., of goods in bill-of-entry or shipping bill.
- 30. "Real value" defined.
- 31. Examination of *ad valorem* goods.
- 32. Procedure where such goods are under-valued by owner.
- 33. Abatement allowed on damaged goods.
- 34. Deterioration of tariff-value goods.
- 35. No abatement when duty is levied on quantity.
- 36. Restriction on amendment of bill of-entry or shipping-bill.
- 37. Alteration of import duty or tariff-valuation.
- 38. Alteration of export duty or tariff-valuation.
- 39. Payment of duties short-levied or erroneously refunded.
- 40. No refund of charges erroneously levied or paid, unless claimed within three months.
- 41. Power to give credit for, and keep account-current of, duties and charges.

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- 42. Drawback allowable on re-export.
- 43. Drawback on goods exported to Customs-port and thence to Foreign Port.
- 44. Drawback of duties on wine and spirit allowed for officers of Navy.
- 45. Persons entering such wine or spirit for drawback to declare name and rank of officer claiming same.
- 46. Transfer of wine or spirit from one Naval officer to another.
- 47. Provisions and stores for Her Majesty's Navy.
- 48. Indian Marine and Marine-survey.
- 49. Power to declare what goods are identifiable, and to prohibit drawback in case of specified Foreign Port.
- 50. When no drawback allowed.
- 51. Time to claim drawback.
- 52. Declaration by parties claiming drawback.

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- 53. Power to fix places beyond which inward bound vessels are not to proceed until manifest delivered. Delivery of manifest when vessel anchors below place so fixed.
- 54. Delivery of manifest where no place has been so fixed.
- 55. Signature and contents of manifest.
- 56. Duty of person receiving manifest.
- 57. Bulk not to be broken until manifest, etc., delivered, and vessel entered inwards.
- 58. Master, if required, to deliver bill-of-lading, etc., to Customs-collector, and answer questions.
- 59. Special pass for breaking bulk.
- 60. Manifest, etc., may be delivered by ship's agent.

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- 61. Order for entry outwards obtained before export cargo is shipped.
- 62. No vessel to depart without port-clearance.
- 63. Application for port-clearance.
- 64. Power to refuse port-clearance.
- 65. Grant of port-clearance.
- 66. Grant of port-clearance on security of ship's agent.

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- 67. Power to depute Customs-officer to board ships.
- 68. Officer and servant to be received.
- 69. Officers of Customs to have free access to every part of ship, and may seal and secure goods. Power to authorize search and opening of locks.
- 70. Goods not to be shipped, discharged or water-borne except in presence of officer.
- 71. Period allowed for discharge and shipment of cargo.
- 72. Goods not to be landed, etc., on Sundays or holidays, without permission, nor except within fixed hours.

Sea Customs Act, 1878—(Continued).**SECTIONS.**

- 73. Goods not to be shipped, etc., except at wharves.
- 74. Power to exempt from sections 70 and 73.
- 75. Power to make rules regarding baggage and mails. Landing fees.
- 76. Boat-note.
- 77. Goods water-borne to be forthwith landed or shipped.
- 78. Such goods not to be transhipped without permission.
- 79. Power to prohibit plying of unlicensed cargo-boats.
- 80. Power to require goods to be weighed or measured on board before landing or after shipment.

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- 83. Procedure in respect of goods not landed within time allowed.
- 84. Power to land small parcels. Notice regarding unclaimed packages.
- 85. Power to permit immediate discharge.
- 86. Entry for home consumption or warehousing.
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- 91. Form of application.
- 92. Warehousing bond.
- 93. Forwarding of goods to warehouse.
- 94. Receipt of goods at warehouse.
- 95. Goods how warehoused.
- 96. Warrant to be given when goods are warehoused.

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- 98. Power to cause packages lodged in warehouse to be opened and examined.
- 99. Access of owners to warehoused goods.
- 100. Owner's power to deal with warehoused goods.
- 101. Payment of rent and warehouse-dues.
- 102. Goods not to be taken out of warehouse, except as provided by this Act.
- 103. Period for which goods may remain warehoused under bond.

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- 104. Power to remove goods from one warehouse to another in same Port.
- 105. Power to remove goods from one Port to another. Procedure.
- 106. Transmission of account of goods to officers at Port of destination.
- 107. Remover may enter into a general bond.
- 108. Goods on arrival at Port of destination to be subject to same laws as goods on first importation.
- 109. Bond under section 92 to continue in force notwithstanding removal.

Clearance for Home-consumption or Shipment.

- 110. Clearance of bonded goods for home-consumption.
- 111. Clearance of same for shipment to Foreign Port.
- 112. Clearance of same for shipment as provisions, etc., on vessel proceeding to Foreign Ports.
- 113. Form of application for clearance of goods.
- 114. Re-assessment of warehoused goods when damaged.
- 115. Re-assessment on alteration of duty or tariff valuation.
- 116. Allowance in case of wine, spirit, beer or salt.
- 117. Further special allowance.

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- 118. If goods are improperly removed from warehouses, or allowed to remain beyond time fixed, or lost or destroyed, or taken as samples. Collector may demand duty, etc.
- 119. Procedure on failure to pay duty, etc.
- 120. Noting removal of goods.
- 121. Register of bonds.

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- 122. Power to remit duties on warehoused goods lost or destroyed.
- 123. Responsibility of warehouse-keeper. Compensation for loss or injury.
- 124. Public warehouse to be locked.
- 125. Power to decide where goods may be deposited in public warehouse, and on what terms.
- 126. Expenses of carriage, packing, etc., to be borne by owners.
- 127. Bengal Bonded Warehouse Association.

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- 129. Superintendence of transhipment.
- 130. Subsidiary rules as to transhipment.
- 131. Entry and warehousing on arrival, of goods transhipped under section 128, clause 2.
- 132. Transhipment of provisions and stores from one vessel to another of same owner without payment of duty.
- 133. Levy of transhipment fee.
- 134. Power to prohibit transhipment.
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- 138. Bond required in certain cases before exportation.
- 139. Additional charge on goods cleared for shipment after port-clearance granted.
- 140. Notice of non-shipment or re-landing, and return of duty thereon.
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- 142. Vessel returning to Port may enter and land goods under import-rules.
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- 144. Rules for removal of spirit from distillery, without payment of duty, for exportation.
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- 149. Removal for local consumption of spirit intended for exportation.

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- 150. Drawback of excise-duty on spirit exported.

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- 151. Differential duty to be levied in certain cases.
- 152. Rum-shrub, etc., how charged with duty.
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- 159. Delivery of manifest, etc., on arrival.
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- 171. Power to stop vessels, carts, etc., and search for goods on reasonable suspicion.
- 172. Power to issue search-warrants.
- 173. Persons reasonably suspected may be arrested.
- 174. Persons arrested to be taken to nearest Magistrate or Customs-collector.
- 175. Persons taken before Magistrate may be detained or admitted to bail.
- 176. Person escaping may be afterwards arrested.
- 177. Persons in Her Majesty's Navy, when arrested, to be secured on board until warrant procured.
- 178. Seizure of things liable to confiscation.
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- 180. Procedure in respect of things seized on suspicion.
- 181. When seizure or arrest is made, reason in writing to be given.
- 182. Adjudication of confiscations and penalties.
- 183. Option to pay fine in lieu of confiscation.
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- 187. Offences not specially provided for how tried.
- 188. Appeal from subordinate to Chief Customs-authority.
- 189. Deposit, pending appeal, of duty demanded.
- 190. Power to remit penalty or confiscation.
- 191. Revision by Local Government.
- 192. Goods on which penalty incurred not to be removed till payment. Other goods of person liable to fine or penalty may be detained.
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- 194. Power to open packages and examine goods.
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 - 196. Owner to pay expense incidental to compliance with Customs-law.
 - 197. No compensation for loss or injury except on proof neglect or wilful Act.
 - 198. Notice of proceedings.
 - 199. Wharfage-fees.
 - 200. Duplicates of documents may be granted on payment of fee.
 - 201. Amendment of documents.
 - 202. Custom-house agents.
 - 203. Agent to produce authority if required.
 - 204. Rules to be notified.
 - 205. Cancellation of notifications.
 - 206. Remission of duty and compensation to owner in certain cases.
 - 207. Saving of Calcutta Port Commissioners' and Bombay Port Trust Acts.
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- 1. Prohibition of sale of person or right to his labour on ground of slavery.
- 2. Bar to enforcement of rights arising out of alleged property in person as a slave.

Slavery Act, 1843—(Concluded).

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3. Bar to dispossession of property on ground of owner's slavery.
4. Penal offence against alleged slave.

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2. Carriages to be licensed.
3. Power to refuse license.
4. Charge for, and duration of license.
5. Particulars to be printed on conspicuous part of carriage.
6. Penalty for letting carriage without having particulars painted.
7. Penalty for letting for hire unlicensed carriage.
8. Penalty for allowing carriage to be drawn by fewer animals or more passengers, etc., to be carried than provided by license.
9. Penalty for ill-treating animals.
10. Revocation of license.
11. Penalty for not conforming to provisions of section 5.
12. Penalty for misconduct on part of drivers.
13. Penalty when recoverable from proprietor.
14. Issue of summons.
15. Adjudication of penalties.
16. Recovery of penalties, etc.
17. Offender may be apprehended and detained in custody until return of warrant of distress.
18. Imprisonment of offender if distress not sufficient.
19. Recovery of penalty and costs from European British subjects.
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- 20-A. Power to make rules.
21. Interpretation clause.
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12. Cancellation of adhesive stamps.
27. Facts affecting duty to be set forth in instrument.
30. Obligation to give receipt in certain cases.
39. Examination and impounding of instruments.
35. Instruments not duly stamped inadmissible in evidence, etc.
38. Instruments impounded how dealt with.
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61. Revision of certain decisions of Courts regarding the sufficiency of stamps.

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62. Penalty for executing, etc., instrument not duly stamped.
63. Penalty for failure to cancel adhesive stamp.
64. Penalty for omission to comply with provisions of section 27.
65. Penalty for refusal to give receipt and for devices to evade duty on receipts.
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67. Penalty for not drawing full number of bills or marine policies purporting to be in sets.
68. Penalty for post-dating bills, and for other devices to defraud the revenue.
69. Penalty for breach of rule relating to sale of stamps and for unauthorized sale.
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71. Jurisdiction of Magistrates.
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Supreme Courts' Officers Trading Act, 1888

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2. Exemption of officers who are also advocates, etc.
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3. Definitions.

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5. Power for Government to take possession of licensed telegraphs and to order interception of messages.
6. Power to establish telegraph on land of Railway Company.
7. Power to make rules for the conduct of telegraphs.
8. Revocation of licenses.
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10. Power for telegraph authority to place and maintain telegraph lines and posts.
11. Power to enter on property in order to repair or remove telegraph lines or posts.

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12. Power for local authority to give permission under section 10, clause (c), subject to conditions.
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15. Disputes between telegraph authority and local authority.

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16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.
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18. Removal of trees interrupting telegraphic communication.
19. Telegraph lines and posts placed before the passing of this Act.
- 19-A. Person exercising legal right likely to damage telegraph or interfere with telegraphic communication to give notice
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- 20-A. Breach of condition of license.
21. Using such telegraphs.
22. Opposing establishment of telegraphs on railway land.
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24. Unlawfully attempting to learn contents of messages.
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- 25-A. Injury to or interference with a telegraph line or post.
26. Telegraph officer or other official making away with or altering, or unlawfully intercepting or disclosing messages, or divulging purport of signals.
27. Telegraph officer fraudulently sending messages without payment.
28. Misconduct.
29. Sending fabricated message.
- 29-A. Penalty.
30. Retaining a message delivered by mistake.
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2. Amendment of the law as to the jurisdiction of the Admiral.
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2. Definitions.
3. Exemptions from tolls.
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THE ALL INDIA CRIMINAL COURT MANUAL

Vol. I.—Minor Acts.

THE ACTING JUDGES ACT, 1867.

(ACT XVI OF 1867.)

[Passed on the 1st March, 1867.]

*An Act to authorize the making of acting appointments to certain
Judicial Offices.*

WHEREAS the Governor General of India in Council or the Local
Government, as the case may be, is empowered by
Preamble. divers enactments to appoint the Judges of certain
Courts in British India: And whereas it has been
doubted whether he or it is empowered to appoint persons to act temporarily as such Judges, and it is expedient to remove such doubts; It is hereby enacted as follows:—

1. In every case in which the Governor General of India in Council, or the Local Government, as the case may be, has
Power to appoint acting Judges. power under any Act or Regulation to appoint a Judge of any Court in British India, such power shall be taken to include the power to appoint any person capable of being appointed a permanent Judge of such Court, to act as Judge of the same Court for such time as the Governor General of India in Council or the Local Government, as the case may be, shall direct. Every person so appointed to act temporarily as a Judge of any such Court shall have the powers and perform the duties which he would have had and been liable to perform in case he had been duly appointed a permanent Judge of the same Court.

Certain enactments to be construed as if they contained a clause like section 1 of this Act.

2. Every such Act and Regulation shall be construed as if it contained a special clause to the purport or effect of the first section of this Act.

THE AIRCRAFT^[1] ACT, 1911.
(ACT XVII OF 1911.)

[Passed on the 23rd September, 1911.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1911	XVII	Aircraft ...	Amended by Act X of 1914. Title changed by Act XVI of 1914. Am. by Act XVII of 1914.

An Act to control the manufacture, possession, use, sale, import and export of aircraft.

WHEREAS it is expedient to take power to control the manufacture, possession, use, sale, import and export of aircraft; It is hereby enacted as follows :—

Short title, extent and commencement. 1. (1) This Act may be called the Indian Aircraft Act, 1911.

(2) It extends to the whole of British India, including British Baluchistan, the Santhal Parganas and the Pargana of Spiti.

(3) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, direct in this behalf.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "aircraft" means any machine fitted with mechanical or other means of propulsion designed to fly or float in the air without connection with the earth, and includes any part of any such machine ;

(2) "export" means taking out of British India ;

(3) "import" means bringing into British India ; and

(4) "prescribed" means prescribed by rules under this Act.

3. (1) The Governor General in Council, or the Local Government subject to the control of the Governor General in Council, may make rules consistent with this Act to regulate or prohibit, except under and in accordance with the conditions of a license granted as provided by such rules, the manufacture, possession, use, sale, import and export of aircraft or any specified class of aircraft.

Power to make rules for licensing the manufacture, possession, use, sale, import and export of aircraft.

(2) In particular and without prejudice to the generality of the foregoing power, the Governor General in Council or the Local Government,

Leg. Changes.—[1] The original title of the Act, viz., the 'Airships' Act was altered into the present title by Act XVI of 1914. Hence all the words 'airship' and 'airships' found in the original Act have been altered into 'aircraft.'

as the case may be, may make rules for all or any of the following, among other matters, that is to say :—

- (a) the authority by which licenses may be granted ;
- (b) the fees to be charged for licenses, and the other sums (if any) to be paid for expenses by applicants for licenses ;
- (c) the manner in which applications for licenses shall be made, and the matters to be specified in such application ;
- (d) the forms in which, and the conditions subject to which, licenses may be granted ;
- (e) the period for which licenses shall continue in force ;
- (f) the keeping by the holder of any such license of a record or account in the prescribed form of anything done under such license, and the exhibition of such record or account when called upon to do so by any officer of Government specially empowered by any such rule in this behalf ;
- (g) the production by the person holding any license of such license, and the production or accounting for by him of the aircraft covered by such license, when called upon to do so by any officer of Government specially empowered by any such rule in this behalf ;
- (h) the prohibition, either absolutely or subject to conditions, of the carrying in aircraft of all or any of the following things, namely :—explosives, arms, ammunition, carrier-birds, photographic or wireless telegraphic apparatus or such other things as may hereafter be prescribed in this behalf ; and
- (i) the carrying of a number or other means of identification by aircraft and the registration of such number or means of identification.

(3) In making any rule under this section, other than under clause (h) thereof, the authority making the rule may direct that a breach of it shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both.

4. (1) Notwithstanding anything in any rule made under section 3,

the Governor General in Council may, by notification in the Gazette of India, prohibit either absolutely or subject to conditions the import or export of all or any aircraft or any class of aircraft if, in his opinion, the issue of such a notification is expedient in the interest of the public safety or tranquillity.

(2) When a notification has been issued under sub-section (1), the officers of sea customs shall have the same power in respect of the aircraft specified therein, and in respect of any vessel containing any such aircraft as they have for the time being in respect of any article the import or export of which is prohibited or regulated by the law relating to sea customs and the vessel containing the same ; and the enactments for the time being in force relating to sea customs or any such article or vessel shall apply accordingly.

Power to Governor General in Council to cancel or suspend licenses and to acquire aircraft for the public service.

5. (1) If the Governor General in Council is of opinion that, in the interest of the public safety or tranquillity, the issue of all or any of the following orders is expedient, he may by notification in the Gazette of India—

- (i) cancel or suspend all or any licenses issued under this Act either absolutely or subject to such conditions as he may think fit to prescribe ;
- (ii) direct that all or any aircraft or any specified class of aircraft shall be delivered, either forthwith or within a specified time, to such authority as he may appoint in this behalf ;
- (iii) direct that all or any aircraft delivered to any authority in accordance with a direction under sub-clause (ii) shall be at the disposal of His Majesty for the public service.

(2) On the issue of a notification under clause (ii) of sub-section (1), any person, in whose possession any aircraft referred to in such notification may be, shall forthwith, or within the time specified in such notification, deliver the same to the authority specified therein.

(3) On the issue of a notification under clause (iii) of sub-section (1) in respect of any aircraft, the owner thereof shall be paid such compensation as may be determined by such officer as the Local Government may appoint in this behalf.

(4) In determining the amount of any compensation payable under sub-section (3), such officer shall have regard to any rules regulating the assessment and payment of compensation which the Governor General in Council, or the Local Government subject to the control of the Governor General in Council, may make in this behalf.

Power to make rules conferring powers of inspection, search, seizure, detention and removal.

6. (1) The Governor-General in Council, or the Local Government subject to the control of the Governor General in Council, may make rules consistent with this Act authorising any officer—

- (a) to enter, inspect and examine any place, carriage or vessel in which an aircraft is being manufactured, possessed, used, sold, imported or exported under a license granted under this Act, or in which he has reason to believe that an aircraft has been or is being manufactured, possessed, used, sold, imported or exported in contravention of this Act or of any rule made thereunder ;
- (b) to search for aircraft therein ;
- (c) to seize, detain and remove any aircraft found therein ; and
- (d) to search any aircraft for explosives, arms, ammunition, carrier-birds, photographic or wireless telegraphic apparatus or such other things as may hereafter be prescribed in this behalf, and to seize, detain and remove any such things if found thereon.

(2) The provisions of the Code of Criminal Procedure, 1898, relating to searches under that Code, shall, so far as the same are applicable, apply to searches by officers authorised by rules under this section.

[1] 7. (1) The Governor General in Council may, by notification in the Gazette of India, prohibit or regulate the navigation of aircraft over, or the entry of aircraft by flight into, British India or any part thereof, including the territorial waters adjacent thereto.

Prohibition and regulation of navigation of aircraft.

(2) Subject to the control of the Governor General in Council the Local Government of a province may, by notification in the local official Gazette, exercise in respect of the province the like powers of prohibiting or regulating navigation as are conferred by sub-section (1) on the Governor General in Council.

(3) Any notification issued under sub-section (1) or (2) may apply either to all aircraft or to any specified class or description of aircraft, and may prohibit navigation or entry as aforesaid, as the case may be, either at all times or at specified times or on specified occasions, and either absolutely or subject to specified exceptions or conditions, and such conditions may, without prejudice to the generality of the foregoing provision, require any aircraft—

- (a) to display specified signals or marks,
- (b) to comply with specified signals in a specified manner,
- (c) to land within a specified area or at a specified place, and
- (d) in the case of aircraft entering British India by flight, also to enter at a specified place.

[2] 7-A. (1) Whenever an aircraft contravenes the conditions of a notification issued under section 7 requiring it to comply with specified signals in a specified manner, any person appointed in this behalf by the Governor General in Council may fire at or into such aircraft, and use any and every other means necessary to compel compliance.

Compliance with signals.

(2) The Governor General in Council may delegate to any authority the power of making appointments under sub-section (1).

Penalty for certain offences.

8. Whoever in contravention of—

(1) a rule made under section 3, sub-section (2), clause (h), carries in an aircraft, explosives, fire-arms, ammunition, carrier-birds, photographic or wireless telegraphic apparatus or such other things as may hereafter be prescribed in this behalf, or

(2) a notification issued under section 4, imports or exports an aircraft, or

(3) a notification issued under section 5, sub-section (1), clause (i), does or abstains from doing any act, or

(4) a notification issued under section 5, sub-section (1), clause (ii), fails to deliver to the proper authority any aircraft in his possession, or

[1] (5) a notification issued under section 7, does or abstains from doing any act, unless, in the case of contravening a condition relating to navigation or landing, he proves that he was compelled thereto by stress of weather or other circumstances over which he had no control,

Leg. Changes:—[1] Substituted by Act XVI of 1914. [2] Added by Act XVI of 1914.

shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

9. Whoever, in any case not provided for in section 8, manufactures, possesses, uses, sells, imports or exports an aircraft in contravention of this Act or of the conditions of a license granted thereunder, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

10. When a person is convicted of an offence punishable under this Act or the rules made thereunder, the Court before which he is convicted may direct that the aircraft or the thing (if any) in respect of which the offence has been committed, or any part of such thing, shall be forfeited to His Majesty.

11. Whoever abets the commission of an offence punishable under this Act, or the rules made thereunder, or attempts to commit any such offence and in such attempt does any act towards the commission of the same, shall be punishable as if he had committed the offence.

12. Nothing in this Act shall apply to the manufacture, possession, use, sale, import or export of any aircraft—

- (a) by order of the Government, or
- (b) by any person employed under the Government in the execution of this Act or [by] [1] a public servant in the course of his employment or duty as such.

13. (1) The power to make rules conferred by this Act is subject to the condition of the rules being made after previous publication.

(2) All rules made under this Act shall be published in the Gazette of India or the local official Gazette, as the case may be, and shall thereupon have effect as if enacted in this Act.

14. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

**THE ANARCHICAL AND REVOLUTIONARY
CRIMES ACT, 1919.**

(ACT XI OF 1919.)

[Passed on the 21st March, 1919.]

An Act to cope with anarchical and revolutionary crime.

WHEREAS it is expedient to make provision that the ordinary criminal law should be supplemented and emergency powers should be exercisable by the Government for the purpose of dealing with anarchical and revolutionary movements ;

And whereas the previous approval of the Secretary of State in Council has been accorded to the making of this law ; It is hereby enacted as follows :—

Short title, extent and duration. 1. (1) This Act may be called the Anarchical and Revolutionary Crimes Act, 1919 ;

(2) It extends to the whole of British India ; and

(3) It shall continue in force for three years from the date of the termination of the present war.

Definitions. 2. (1) In this Act, unless there is anything repugnant in the subject or context,—

“ Chief Justice ” means the Judge of highest rank in a High Court ;

“ The Code ” means the Code of Criminal Procedure, 1898 ; v

“ High Court ” means the highest Court of criminal appeal or revision for any local area ;

“ Scheduled offence ” means any offence specified in the Schedule.

(2) All words and expressions used in this Act and defined in the Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them in the Code.

PART I.

3. If the Governor-General in Council is satisfied that, in the whole or any part of British India, anarchical or revolutionary movements are being promoted, and that scheduled offences in connection with such movements are prevalent to such an extent that it is expedient in the interests of the public safety to provide for the speedy trial of such offences, he may, by notification in the Gazette of India, make a declaration to that effect, and thereupon the provisions of this Part shall come into force in the area specified in the notification.

4. (1) Where the Local Government is of opinion that the trial of any person accused of a scheduled offence should be held in accordance with the provisions of this Part, it may order any officer of Government to prefer a written information to the Chief Justice against such person.

(2) No order under sub-section (1) shall be made in respect of, or be deemed to include, any person who has been committed under the Code for trial before a High Court or a Court of Session, but save as aforesaid, an order under that sub-section may be made in respect of any scheduled offence whether such offence was committed before or after the issue of the notification under section 3.

(3) The information shall state the offence charged and so far as known the name, place of residence, and occupation of the accused, and the time and place when and where the offence is alleged to have been committed and all particulars within the knowledge of the prosecution of what is intended to be proved against the accused.

(4) The Chief Justice may by order require any information to be amended so as to supply further particulars of the offence charged to the accused, and shall direct a copy of the information or the amended information, as the case may be, to be served upon the accused in such manner as the Chief Justice may direct.

5. Upon such service being effected, and on application duly made to him, the Chief Justice shall nominate three of the High Court Judges (hereinafter referred to as the Court) for the trial of the information, and shall fix a date for the commencement of the trial:

Provided that when the total number of Judges of the High Court does not exceed three, the Chief Justice shall nominate not more than two such Judges, and shall complete the Court by the nomination of one or, if necessary, two persons of either of the following classes, namely:—

- (a) persons who have served as permanent Judges of the High Court; or
- (b) with the consent of the Chief Justice of another High Court, persons who are Judges of that High Court.

6. The Court may sit for the whole or any part of a trial at such place or places in the province as it may consider desirable:

Provided that if the Advocate-General certifies to the Court that it is in his opinion necessary in the interests of justice that the whole or any part of a trial shall be held at some place other than the usual place of sitting of the High Court, the Court shall, after hearing the accused, make an order to that effect, unless for reasons to be recorded in writing it thinks fit to make any other order. It shall not be necessary for the certificate of the Advocate-General to be supported by any affidavit, nor shall he be required to state the grounds upon which such certificate was given.

7. The provisions of the Code shall apply to proceedings under this Part, in so far as the said provisions are not inconsistent with the provisions of this Part, and such proceedings shall be deemed to be proceedings under the Code, and the Court shall have all the powers conferred by the Code on a Court of Session exercising original jurisdiction.

8. (1) The trial shall be commenced by the reading of the information, and thereafter the prosecutor shall state shortly by what evidence he expects to prove the guilt of the accused.

Trial. (2) The Court shall then, subject to the provisions of this Part, in trying the accused, follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates.

9. If a charge is framed, the accused shall be entitled to ask for an adjournment for fourteen days, or any less period that he may specify, and the Court shall comply with his request, but, subject to the adjournment provided for by this section, the Court shall not be bound to adjourn any trial for any purpose, unless such adjournment is in its opinion necessary in the interests of justice.

10. The Court shall cause the evidence of each witness who is examined to be recorded in full in such manner as the Court may direct.

11. The Court, if it is of opinion that such a course is necessary in the public interest or for the protection of a witness, may prohibit or restrict in such way as it may direct the publication or disclosure of its proceedings or any part of its proceedings.

12. (1) No questions shall be put by the Court to the accused in the course of a trial under this Part until the close of the case for the prosecution. Thereafter, and before the accused enters on his defence, the Court shall inform the accused that he is entitled, if he so desires, to give evidence on oath on his own behalf, and shall at the same time inform him that if he does so, he will be liable to cross-examination. Unless the accused then states that he desires to give evidence on oath, the Court may at any time thereafter question the accused generally on the case in accordance with the provisions of section 342 of the Code.

(2) If, when so called upon, the accused states that he desires to give evidence on oath, the Court shall not at any subsequent stage put any question to him :

Provided that if the accused does not so give evidence, then, after the witnesses for the defence have been examined, the Court may question the accused generally on the case in accordance with the provisions of the said section.

(3) The failure of the accused to give evidence on oath shall not be made the subject of any comment by the prosecution, nor shall the Court draw any inference adverse to the accused from such failure.

(4) If the accused gives evidence on oath, the following rules shall be observed, namely :—

(a) He may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged.

(b) He shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of, or has been charged with, any offence other than that with which he is then charged, or has a bad character, unless—

(i) proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged, or

(ii) witnesses for the prosecution have been cross-examined with a view to establish his own good character, or he has given evidence of his good character or the nature or the conduct of the defence is such as to involve imputations on the character of the witnesses for the prosecution, or

(iii) he has given evidence against any other person charged with the same offence.

(c) Unless otherwise ordered by the Court, he shall give his evidence from the witness-box or other place from which the other witnesses give their evidence.

13. If the accused or any one of the accused calls and examines any witness, the right of final reply shall lie with the prosecution, but in all other cases with the accused :
Right of reply.

Provided that the examination of an accused as a witness shall not of itself confer the right of final reply on the prosecution.

14. In the event of any difference of opinion among the members of the Court, the opinion of the majority shall prevail.
Differences of opinion.

15. At any trial under this Part the accused may be charged with and convicted of any offence against any provision of the law which is referred to in the Schedule.
Accused may be convicted of any offence referred to in Schedule.

16. The Court may pass upon any person convicted by it any sentence authorised by law for the punishment of the offence of which such person is convicted, and no order of confirmation shall be necessary in the case of any sentence passed by it :
Sentence.

Provided that a sentence of death shall not be passed upon any accused person in respect of whose guilt there is a difference of opinion among the members of the Court.

17. The judgment of the Court shall be final and conclusive and, notwithstanding the provisions of the Code or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence of the Court, and no High Court shall have authority to revise any such order or sentence or to transfer any case from such Court, or to make any order under section 491 of the Code or have any jurisdiction of any kind in respect of any proceedings under this Part :
Exclusion of interference of other criminal Courts.

8. 22 **ACT XI OF 1919 (ANAR. & REVL. CRIMES). Anarchical.**

Provided that nothing in this section shall be deemed to affect the powers of the Governor-General in Council or of the Local Government to make orders under section 401 or section 402 of the Code in respect of any person sentenced by the Court.

Special rules of evidence. **18.** (1) Notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872, where—

(a) the statement of any person has been recorded by a Magistrate, and such statement has been read over and explained to the person making it and has been signed by him, or

(b) the statement of any person has been recorded by the Court, but such person has not been cross-examined,

such statement may be admitted in evidence by the Court if the person making the same is dead or cannot be found or is incapable of giving evidence, and it is established to the satisfaction of the Court that such death, disappearance or incapacity has been caused in the interests of the accused.

(2) Depositions recorded under section 512 of the Code may, in the circumstances specified in that section, be given in evidence at the trial of an accused under this Part.

Recall of witnesses on reconstitution of Court. **19.** In case of any reconstitution of the Court during the trial, the Court so reconstituted shall, if the accused so desires, re-call and re-hear any witness who has already given evidence in the case.

Power to make rules. **20.** The Chief Justice may from time to time make rules providing for—

(1) the appointment and powers of a President of the Court, and the procedure to be adopted to complete the Court in the event of any Judge of the Court being prevented from attending throughout the trial of an accused; and

(2) any matters (including the intermediate custody of the accused and his release on bail) which appear to him necessary for carrying into effect or supplementing the provisions of this Part preliminary or ancillary to trials.

PART II.

Condition of application of Part II. **21.** If the Governor-General in Council is satisfied that anarchical or revolutionary movements which are, in his opinion, likely to lead to the commission of scheduled offences are being extensively promoted in the whole or any part of British India, he may, by notification in the Gazette of India, make a declaration to that effect, and thereupon the provisions of this Part shall come into force in the area specified in the notification.

Powers exercisable when Part II is in force. **22.** (1) Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person is or has been actively concerned in such area in any movement of the nature referred to in section 21, the Local Government may place all the materials in its

possession relating to his case before a judicial officer who is qualified for appointment to a High Court and take his opinion thereon. If, after considering such opinion, the Local Government is satisfied that action under the provisions of this section is necessary, it may by order in writing containing a declaration to the effect that such person is or has been actively concerned in such area in any movement of the nature referred to in section 21, give all or any of the following directions, namely : that such person—

- (a) shall, within such period as may be specified in the order, execute a bond with or without sureties undertaking, for such period not exceeding one year as may be so specified, that he will not commit, or attempt or conspire to commit, or abet the commitment of, any offence against any provision of the law which is referred to in the Schedule ;
- (b) shall notify his residence and any change of residence to such authority as may be so specified ;
- (c) shall remain or reside in any area in British India so specified :
Provided that, if the area so specified is outside the province, the concurrence of the Local Government of that area to the making of the order shall first have been obtained ;
- (d) shall abstain from any act so specified which, in the opinion of the Local Government, is calculated to disturb the public peace or is prejudicial to the public safety ; and
- (e) shall report himself to the officer in charge of the police-station nearest to his residence at such periods as may be so specified.

(2) Any order under clauses (b) to (e) of sub-section (1) may also be made to take effect upon default by the person concerned in complying with an order under clause (a) of that sub-section.

23. An order made under section 22 shall be served on the person in respect of whom it is made in the manner provided in the Code for service of summons, and upon such service such person shall be deemed to have due notice thereof.

Service of orders
under section 22.

24. The Local Government and every officer of Government to whom a copy of any order made under section 22 may be directed by, or under the general or special authority of, the Local Government, may use all means reasonably necessary to enforce compliance with the same.

Enforcement of
orders.

25. An order made under section 22 shall only continue in force for a period of one month, unless it is extended by the Local Government as hereinafter provided in this Part.

Interim nature of
order made by Local
Government.

26. (1) When the Local Government makes an order under section 22, such Government shall, as soon as may be, forward to the investigating authority to be constituted under this Act a concise statement in writing setting forth plainly the grounds on which the Government

Reference to in-
vestigating autho-
rity.

considered it necessary that the order should be made, and shall lay before the investigating authority all material facts and circumstances in its possession relevant to the inquiry.

(2) The investigating authority shall then hold an inquiry *in camera* for the purpose of ascertaining what, in its opinion, having regard to the facts and circumstances adduced by the Government, appears against the person in respect of whom the order has been made. Such authority shall in every case allow the person in question a reasonable opportunity of appearing before it at some stage in its proceedings and shall, if he so appears, explain to him the nature of the charge made against him and shall hear any explanation he may have to offer, and shall make such further investigation (if any) as appears to such authority to be relevant and reasonable :

Provided that—

- (a) nothing in this sub-section shall be deemed to entitle the person whose case is before the investigating authority to appear or to be represented before it by pleader, nor shall the Local Government be so entitled :
- (b) the investigating authority shall not disclose to the person in question any fact the communication of which might endanger the public safety or the safety of any individual :
- (c) if the person in question requests the investigating authority to secure the attendance of any person or the production of any document or thing, such authority shall, unless for reasons to be recorded in writing it deems it unnecessary so to do, cause such person to attend or such document or thing to be produced, and for that purpose shall have all the powers conferred on a District Magistrate in respect of those matters by the Code.

(3) Subject to the provisions of sub-section (2) the inquiry shall be conducted in such manner as the investigating authority considers best suited to elicit the facts of the case ; and in making the inquiry, such authority shall not be bound to observe the rules of the law of evidence.

(4) Any statement made to an investigating authority by any person other than the person whose case is under investigation shall be deemed to be information given to a public servant within the meaning of section 182 of the Indian Penal Code.

XLV of 1860.

(5) On the completion of the inquiry, the investigating authority shall report in writing to the Local Government the conclusions at which it has arrived, and shall adduce reasons in support thereof. In so reporting the investigating authority shall state whether or not, in its opinion, the person whose case is under investigation is or has been actively concerned in any movement of the nature referred to in section 21.

(6) If the investigating authority has not completed the inquiry within the period for which the duration of the order is limited by section 25, such authority may recommend to the Local Government that the period of duration of the order shall be extended for such period as it may consider necessary, and on such a recommendation the Local Government may extend the duration of the order accordingly.

Disposal of report of investigating authority. 27. (1) On receipt of the report of the investigating authority, the Local Government may discharge the order made under section 22, or may make any order which is authorised by that section :

Provided that—

- (a) any order so made shall recite the conclusions of the investigating authority as reported by that authority ; and
- (b) a copy of such order shall be furnished to the person in respect of whom it is made.

(2) No order made under sub-section (1) shall continue in force for more than one year from the date of the order made under section 22.

(3) On the expiry of an order made under sub-section (1), the Local Government may, if it is satisfied that such a course is necessary in the interests of the public safety, again make in respect of the person to whom such order related any order which is authorised by section 22 :

Provided that, before an order is made under this sub-section, a copy of the order which it is proposed to make shall be furnished to the person concerned, who may submit to the Local Government a representation in regard to such order. Any such representation shall be forwarded by the Local Government to the investigating authority for inquiry and report, and such authority, after inquiry conducted in accordance with the provisions of section 26, shall report thereon, and the Local Government shall consider such report :

Provided further that no order made under this sub-section shall continue in force for more than a year from the date on which it was made.

(4) Any order made under this section may at any time be discharged or may be altered by the substitution of any other order authorised by section 22 :

Provided that no such alteration shall have the effect of prolonging the period for which such order would have been in force.

(5) The provisions of section 24 shall apply to the enforcement of orders made under this section.

28. If any person fails to comply with, or attempts to evade, any order (other than an order to furnish security) made under section 22 or section 27, he shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to five hundred rupees, or with both.

29. The provisions of section 514 of the Code shall apply to bonds executed under the provisions of this Part, with this modification that the powers conferred by that section on the Court shall be exercisable by any District Magistrate or Chief Presidency Magistrate, on application made on behalf of the Local Government.

S. 33 **ACT XI OF 1919 (ANAR. & REVL. CRIMES). Anarchical.**

30. (1) As soon as may be after a notification has been issued bringing this Part into force, the Local Government shall appoint one or more investigating authorities for the purposes of this Part, and may appoint additional investigating authorities when necessary.

(2) Every investigating authority shall be appointed by order in writing, and shall consist of three persons, of whom two shall be persons having held judicial office not inferior to that of a District and Sessions Judge, and one shall be a person not in the service of the Crown in India.

(3) The Local Government may by like order appoint persons to fill casual vacancies occurring by reason of death, resignation of office or otherwise on any investigating authority, but in so doing shall observe the provisions of sub-section (2).

31. (1) The Local Government shall by order in writing appoint such persons as it thinks fit to be Visiting Committees to report upon the welfare and treatment of persons under restraint under this Part, and shall by rules prescribe the functions which these Committees shall exercise :

Provided that, in making such rules, provision shall be made for periodical visits to persons under restraint under the provisions of this Part :

Provided further that a person in respect of whom an order has been made under section 22 or section 27 requiring him to abstain from any specified act or to report himself to the police shall not be deemed to be under restraint for the purposes of this section.

(2) All rules made under sub-section (1) shall be published in the local official Gazette, and on such publication shall have effect as if enacted in this Part.

32. (1) The Local Government may make rules prescribing the authorities before whom and the manner in which bonds under this Part shall be executed, and providing for the procedure to be followed regarding the notification of residence and reports to the police by persons in respect of whom orders have been made under section 22 or section 27.

(2) All rules made under sub-section (1) shall be published in the local official Gazette, and on such publication shall have effect as if enacted in this Part.

PART III.

33. If the Governor-General in Council is satisfied that in the whole or any part of British India anarchical or revolutionary movements are being promoted and that scheduled offences in connection with such movements are prevalent to such an extent as to endanger the public safety, he may, by notification in the Gazette of India, make a declaration to that effect, and thereupon the provisions of this Part shall come into force in the area specified in the notification.

34. (1) Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person has been or is concerned in such area in any scheduled offence, the Local Government may place all the materials in its possession relating to his case before a judicial officer who is qualified for appointment to a High Court and take his opinion thereon. If after considering such opinion the Local Government is satisfied that such action is necessary, it may make in respect of such person any order authorised by section 22, and may further by order in writing direct—

Powers exercisable when Part III is in force.

- (a) the arrest of any such person without warrant ;
- (b) the confinement of any such person in such place and under such conditions and restrictions as it may specify :

Provided that no such person shall be confined in that part of a prison or other place which is used for the confinement of convicted criminal prisoners as defined in the Prisons Act, 1894 ; and

- (c) the search of any place specified in the order which, in the opinion of the Local Government, has been, is being, or is about to be, used by any such person for any purpose connected with any anarchical or revolutionary movement.

(2) The arrest of any person in pursuance of an order under clause (a) of sub-section (1) may be effected at any place where he may be found by any police-officer or by any other officer of Government to whom the order may be directed.

(3) An order for confinement under clause (b) or for search under clause (c) of sub-section (1) may be carried out by any officer of Government to whom the order may be directed, and such officer may use all means reasonably necessary to enforce the same.

35. Any person making an arrest in pursuance of an order under clause (a) of sub-section (1) of section 34 shall forthwith report the fact to the Local Government and, pending receipt of the orders of the Local Government, may by order in writing commit any person so arrested to such custody as the Local Government may by general or special order specify in this behalf :

Arrest.

Provided that no person shall be detained in such custody for a period exceeding seven days unless the Local Government so directs, and in no case shall such detention exceed fifteen days.

36. An order for the search of any place issued under the provisions of clause (c) of sub-section (1) of section 34 shall be deemed to be a search warrant issued by the District Magistrate having jurisdiction in the place specified therein, and shall be sufficient authority for the seizure of anything found in such place which the person executing the order has reason to believe is being used, or is likely to be used, for any purpose prejudicial to the public safety, and the provisions of the Code, so far as they can be made applicable, shall apply to searches made under the authority of any such order and to the disposal of any property seized in any such search.

Search.

of 1894

37. Where an order (other than an order for arrest or search) has been made under section 34, the provisions of sections 23 to 27 shall apply in the same way as if the order were an order made under section 22, save that, on receipt of the report of the investigating authority, the Local Government may, subject to the conditions prescribed by section 27, make any order which is authorised by section 34, and sections 23 to 27 and 29 to 32 shall be deemed to be included in this Part.

38. If any person fails to comply with, or attempts to evade, any order made under section 34 or section 37 other than with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

PART IV.

39. (1) On the expiration of the Defence of India (Criminal Law Amendment) Act, 1915, every person in respect of whom an order under rule 3 of the Defence of India (Consolidation) Rules, 1915, was in force immediately before the expiration of that Act, and who has in the opinion of the Local Government been concerned in any scheduled offence, shall be deemed to be a person resident in an area in which a notification under section 21 is in force, and the provisions of Part II shall apply to every such person accordingly: and every person who is on such expiration in confinement in accordance with the provisions of the Bengal State Prisoners Regulation, 1818, shall be deemed to be a person resident in an area in which a notification under section 33 is in force, and the provisions of Part III shall apply to every such person accordingly:

Provided that, within one month from the expiration of the Defence of India (Criminal Law Amendment) Act, 1915, the Local Government may, subject to the conditions prescribed in the first proviso to sub-section (3) of section 27 as made applicable by section 37, make any order of restraint which is authorised by Part III in respect of any person who is in confinement in accordance with the provisions of the said Regulation, and if such an order is so made it shall be deemed to be an order made under sub-section (3) of section 27 as made applicable by section 37, and the provisions of that Part regarding such an order shall apply accordingly.

(2) On the expiration of the Ingress into India Ordinance, 1914, any person in respect of whom an order was in force immediately before such expiration under section 2 of that Ordinance read with clause (b) or clause (c) of sub-section (2) of section 3 of the Foreigners Ordinance, 1914, shall be deemed to be a person resident in an area in which a notification under section 21 is in force, and the provisions of Part II shall apply to every such person accordingly.

Provided that, within one month from the expiration of the Ingress into India Ordinance, 1914, the Local Government may, subject to the

conditions prescribed in the first proviso to sub-section (3) of section 27, make any order of restraint which is authorised by that Part in respect of any such person, and if such an order is so made it shall be deemed to be an order made under sub-section (3) of section 27, and the provisions of that Part regarding such an order shall apply accordingly.

PART V.

40. When a notification issued under section 3 or section 21 or section 33 is cancelled, such cancellation shall not affect any trial, investigation or order commenced or made under this Act, and such trial, investigation or order may be continued or enforced, and on the completion of any such investigation, any order which might otherwise have been made may be made and enforced, as if such notification had not been cancelled.

Effect of cancellation of notifications under section 3, 21 or 33.

41. (1) An order made under Part II or Part III, directing a person to remain or reside in any area in British India outside the area in which such Part is in force, shall be as valid, and enforceable in like manner, as if such Part were in force throughout British India.

Effect of orders made under Parts II and III outside notified area.

(2) An order made under clause (a) of sub-section (1) of section 34 for the arrest of any person may be executed at any place in British India outside the area in which Part III is in force, and the same procedure shall be followed as if Part III was in force throughout British India :

Provided that, if the arrest is made outside the province of the Local Government which made the order, the report required by section 35 shall be made to that Local Government, and the maximum period of detention limited by the proviso to that section shall be extended to twenty-one days.

42. No order under this Act shall be called in question in any Court, and no suit or prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Orders under this Act not to be called in question by the Courts.

43. All powers given by this Act shall be in addition to, and not in derogation of, any other powers conferred by or under any enactment, and all such powers may be exercised in the same manner and by the same authority as if this Act had not been passed.

Powers of Act to be cumulative.

THE SCHEDULE.

(See section 2.)

(1) Any offence under the following sections of the Indian Penal XLV of 1860, Code, namely :—sections 121, 121-A, 122, 123, 124, 131 and 132.

(2) Any of the following offences, if, in the opinion of Government, such offence is connected with any anarchical or revolutionary movement, namely :—

- (a) any offence under sections 124-A, 148, 153-A, 302, 304, 326, 327, 329, 332, 333, 385, 386, 387, 392, 394, 395, 396, 397, 398, 399, 400, 401, 402, 431, 435, 436, 437, 438, 440, 454, 455, 457, 458, 459, 460, and 506 of the Indian Penal Code ; XLV of 1860.
- (b) any offence under the Explosive Substances Act, 1908 ; VI of 1908.
- (c) any offence under section 20 of the Indian Arms Act, 1878. XI of 1878.

(3) Any attempt or conspiracy to commit or any abetment of any of the above offences.

THE ANCIENT MONUMENTS PRESERVATION ACT, 1904.

(ACT VII OF 1904.)

[Passed on the 18th March, 1904.]

*An Act to provide for the preservation of Ancient Monuments and objects of
archæological, historical or artistic interest.*

WHEREAS it is expedient to provide for the preservation of ancient monuments, for the exercise of control over traffic in antiquities and over excavation in certain places, and for the protection and acquisition in certain cases of ancient monuments and of objects of archæological, historical or artistic interest ; It is hereby enacted as follows : —

Short title and extent. 1. (1) This Act may be called the Ancient Monuments Preservation Act, 1904.

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "ancient monument" means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archæological or artistic interest, or any remains thereof, and includes—

- (a) the site of an ancient monument ;
- (b) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument ; and
- (c) the means of access to and convenient inspection of an ancient monument :

(2) "antiquities" include any moveable objects which the Government, by reason of their historical or archæological associations, may think it necessary to protect against injury, removal or dispersion :

(3) "Commissioner" includes any officer authorized by the Local Government to perform the duties of a Commissioner under this Act :

(4) "maintain" and "maintenance" include the fencing, covering in, repairing, restoring and cleansing of a protected monument, and the doing of any act which may be necessary for the purpose of maintaining a protected monument or of securing convenient access thereto :

(5) "land" includes a revenue-free estate, a revenue-paying estate, and a permanent transferable tenure, whether such estate or tenure be subject to incumbrances or not : and

(6) "owner" includes a joint owner invested with powers of management on behalf of himself and other joint owners and any manager or trustee exercising powers of management over an ancient monument, and the successor in title of any such owner and the successor in office of any such manager or trustee :

Provided that nothing in this Act shall be deemed to extend the powers which may lawfully be exercised by such manager or trustee.

3. (1) The Local Government may, by notification in the local official Gazette, declare an ancient monument to be a protected monument within the meaning of this Act.

(2) A copy of every notification published under sub-section (1) shall be fixed up in a conspicuous place on or near the monument, together with an intimation that any objections to the issue of the notification received by the Local Government within one month from the date when it is so fixed up, will be taken into consideration.

(3) On the expiry of the said period of one month, the Local Government, after considering the objections, if any, shall confirm or withdraw the notification.

(4) A notification published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the monument to which it relates is an ancient monument within the meaning of this Act.

Ancient Monuments.

4. (1) The Collector, with the sanction of the Local Government, may purchase or take a lease of any protected monument.

(2) The Collector, with the like sanction, may accept a gift or bequest of any protected monument.

(3) The owner of any protected monument may by written instrument constitute the Commissioner the guardian of the monument, and the Commissioner may, with the sanction of the Local Government, accept such guardianship.

(4) When the Commissioner has accepted the guardianship of a monument under sub-section (3), the owner shall, except as expressly provided in this Act, have the same estate, right, title and interest in and to the monument as if the Commissioner had not been constituted guardian thereof.

(5) When the Commissioner has accepted the guardianship of a monument under sub-section (3), the provisions of this Act relating to agreements executed under section 5 shall apply to the written instrument executed under the said sub-section.

(6) Where a protected monument is without an owner, the Commissioner may assume the guardianship of the monument.

5. (1) The Collector may, with the previous sanction of the Local Government, propose to the owner to enter into an agreement with the Secretary of State for India in Council for the preservation of any protected monument in his district.

Preservation of
ancient monument
by agreement.

(2) An agreement under this section may provide for the following matters, or for such of them as it may be found expedient to include in the agreement :—

- (a) the maintenance of the monument ;
- (b) the custody of the monument, and the duties of any person who may be employed to watch it ;
- (c) the restriction of the owner's right to destroy, remove, alter or deface the monument or to build on or near the site of the monument ;
- (d) the facilities of access to be permitted to the public or to any portion of the public and to persons deputed by the owner or the Collector to inspect or maintain the monument ;
- (e) the notice to be given to the Government in case the land on which the monument is situated is offered for sale by the owner, and the right to be reserved to the Government to purchase such land, or any specified portion of such land, at its market value ;
- (f) the payment of any expenses incurred by the owner or by the Government in connection with the preservation of the monument ;
- (g) the proprietary or other rights which are to vest in His Majesty in respect of the monument when any expenses are incurred by the Government in connection with the preservation of the monument ;
- (h) the appointment of an authority to decide any dispute arising out of the agreement ; and
- (i) any matter connected with the preservation of the monument which is a proper subject of agreement between the owner and the Government.

(3) An agreement under this section may be executed by the Collector on behalf of the Secretary of State for India in Council, but shall not be so executed until it has been approved by the Local Government.

(4) The terms of an agreement under this section may be altered from time to time with the sanction of the Local Government and with the consent of the owner.

(5) With the previous sanction of the Local Government, the Collector may terminate an agreement under this section on giving six months' notice in writing to the owner.

(6) The owner may terminate an agreement under this section on giving six months' notice to the Collector.

(7) An agreement under this section shall be binding on any person claiming to be owner of the monument to which it relates, through or under a party by whom or on whose behalf the agreement was executed.

(8) Any rights acquired by Government in respect of expenses incurred in protecting or preserving a monument shall not be affected by the termination of an agreement under this section.

Owners under disability not in possession. 6. (1) If the owner is unable by reason of infancy or other disability to act for himself, the person legally competent to act on his behalf may exercise the powers conferred upon an owner by section 5.

(2) In the case of village-property, the headman or other village-officer exercising powers of management over such property may exercise the power conferred upon an owner by section 5.

(3) Nothing in this section shall be deemed to empower any person not being of the same religion as the persons on whose behalf he is acting to make or execute an agreement relating to a protected monument which or any part of which is periodically used for the religious worship or observances of that religion.

Enforcement of agreement. 7. (1) If the Collector apprehends that the owner or occupier of a monument intends to destroy, remove, alter, deface, or imperil the monument or to build on or near the site thereof in contravention of the terms of an agreement for its preservation under section 5, the Collector may make an order prohibiting any such contravention of the agreement.

(2) If an owner or other person who is bound by an agreement for the preservation or maintenance of a monument under section 5 refuses to do any act which is in the opinion of the Collector necessary to such preservation or maintenance, or neglects to do any such act within such reasonable time as may be fixed by the Collector, the Collector may authorize any person to do any such act, and the expense of doing any such act or such portion of the expense as the owner may be liable to pay under the agreement may be recovered from the owner as if it were an arrear of land-revenue.

• (3) A person aggrieved by an order made under this section may appeal to the Commissioner, who may cancel or modify it and whose decision shall be final.

Purchasers at certain sales and persons claiming through owner bound by instrument executed by owner. 8. Every person who purchases, at a sale for arrears of land revenue or any other public demand, or at a sale made under the Bengal Patni Taluks Regulation, 1819, an estate or tenure in which is situated a monument in respect of which any instrument has been executed by the owner for the time being, under section 4 or section 5, and every person claiming any title to a monument from, through or under an owner who executed any such instrument, shall be bound by such instrument.

9. (1) If any owner or other person competent to enter into an agreement under section 5 for the preservation of a protected monument, refuses or fails to enter into such an agreement when proposed to him by the Collector, and if any endowment has been created for the purpose of keeping such monument in repair, or for that purpose among others, the Collector may institute a suit in the Court of the District Judge, or, if the estimated cost of repairing the monument does not exceed one thousand rupees, may make an application to the District Judge for the proper application of such endowment or part thereof.

(2) On the hearing of an application under sub-section (1), the District Judge may summon and examine the owner and any person whose evidence appears to him necessary, and may pass an order for the proper application of the endowment, or of any part thereof, and any such order may be executed as if it were the decree of a Civil Court.

10. (1) If the Local Government apprehends that a protected monument is in danger of being destroyed, injured or allowed to fall into decay, the Local Government may proceed to acquire it under the provisions of the Land Acquisition Act, 1894, as if the preservation of a protected monument were a "public purpose" (a) within the meaning of that Act. I of 1894.

(2) The powers of compulsory purchase conferred by sub-section (1) shall not be exercised in the case of—

(a) any monument which or any part of which is periodically used for religious observances; or

(b) any monument which is the subject of a subsisting agreement executed under section 5.

(3) In any case other than the cases referred to in sub-section (2), the said powers of compulsory purchase shall not be exercised unless the owner or other person competent to enter into an agreement under section 5 has failed, within such reasonable period as the Collector may fix in this behalf, to enter into an agreement proposed to him under the said section or has terminated or given notice of his intention to terminate such an agreement.

11. (1) The Commissioner shall maintain every monument in respect of which the Government has acquired any of the rights mentioned in section 4 or which the Government has acquired under section 10.

(2) When the Commissioner has accepted the guardianship of a monument under section 4, he shall, for the purpose of maintaining such monument, have access to the monument at all reasonable times, by himself and by his agent, subordinates, and workmen, for the purpose of inspecting the monument, and for the purpose of bringing such materials and doing such acts as he may consider necessary or desirable for the maintenance thereof.

12. The Commissioner may receive voluntary contributions towards the cost of maintaining a protected monument and may give orders as to the management and application of any funds so received by him :

Provided that no contribution received under this section shall be applied to any purpose other than the purpose for which it was contributed.

Protection of place of worship from misuse, pollution or desecration.

13. (1) A place of worship or shrine maintained by the Government under this Act shall not be used for any purpose inconsistent with its character.

(2) Where the Collector has, under section 4, purchased or taken a lease of any protected monument, or has accepted a gift or bequest, or the Commissioner has, under the same section, accepted the guardianship thereof, and such monument, or any part thereof, is periodically used for religious worship or observances by any community, the Collector shall make due provision for the protection of such monument, or such part thereof, from pollution or desecration—

- (a) by prohibiting the entry therein, except in accordance with conditions prescribed with the concurrence of the persons in religious charge of the said monument or part thereof, of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is used, or
- (b) by taking such other action as he may think necessary in this behalf.

Relinquishment of Government rights in a monument.

14. With the sanction of the Local Government, the Commissioner may—

- (a) where rights have been acquired by Government in respect of any monument under this Act by virtue of any sale, lease, gift or will, relinquish the rights so acquired to the person who would for the time being be the owner of the monument if such rights had not been acquired ; or
- (b) relinquish any guardianship of a monument which he has accepted under this Act.

Right of access to certain protected monuments.

15. (1) Subject to such rules as may after previous publication be made by the Local Government, the public shall have a right of access to any monument maintained by the Government under this Act.

(2) In making any rule under sub-section (1), the Local Government may provide that a breach of it shall be punishable with fine which may extend to twenty rupees.

16. Any person other than the owner who destroys, removes, injures, alters, defaces or imperils a protected monument, and any owner who destroys, removes, injures, alters, defaces or imperils a monument maintained by Government under this Act or in respect of which an agreement has been executed under section 5, and any owner or occupier who contravenes an order made under section 7, sub-section (1), shall be punishable with fine which may extend to five thousand rupees, or with imprisonment which may extend to three months, or with both.

Traffic in Antiquities.

17. (1) If the Governor General in Council apprehends that antiquities are being sold or removed to the detriment of India or of any neighbouring country, he may, by notification in the Gazette of India, prohibit or restrict the bringing or taking by sea or by land of any antiquities or class of antiquities described in the notification into or out of British India or any specified part of British India.

(2) Any person who brings or takes or attempts to bring or take any such antiquities into or out of British India or any part of British India in contravention of a notification issued under sub-section (1), shall be punishable with fine which may extend to five hundred rupees.

(3) Antiquities in respect of which an offence referred to in sub-section (2) has been committed shall be liable to confiscation.

(4) An officer of Customs, or an officer of Police of a grade not lower than Sub-Inspector duly empowered by the Local Government in this behalf, may search any vessel, cart or any other means of conveyance, and may open any baggage or package of goods, if he has reason to believe that goods in respect of which an offence has been committed under sub-section (2) are contained therein.

(5) A person who complains that the power of search mentioned in sub-section (4) has been vexatiously or improperly exercised may address his complaint to the Local Government, and the Local Government shall pass such order and may award such compensation, if any, as appears to it to be just.

Protection of Sculptures, Carvings, Images, Bas-reliefs, Inscriptions or like objects.

18. (1) If the Local Government considers that any sculptures, carvings, images, bas-reliefs, inscriptions or other like objects ought not to be moved from the place where they are without the sanction of the Government, the Local Government may, by notification in the local official Gazette, direct that any such object or any class of such objects shall not be moved unless with the written permission of the Collector.

(2) A person applying for the permission mentioned in sub-section (1) shall specify the object or objects which he proposes to move, and shall furnish, in regard to such object or objects, any information which the Collector may require.

(3) If the Collector refuses to grant such permission, the applicant may appeal to the Commissioner, whose decision shall be final.

(4) Any person, who moves any object in contravention of a notification issued under sub-section (1), shall be punishable with fine which may extend to five hundred rupees.

(5) If the owner of any property proves to the satisfaction of the Local Government that he has suffered any loss or damage by reason of the inclusion of such property in a notification published under sub-section (1), the Local Government shall either—

- (a) exempt such property from the said notification ;
- (b) purchase such property, if it be moveable, at its market-value ;
or
- (c) pay compensation for any loss or damage sustained by the owner of such property, if it be immoveable.

19. (1) If the Local Government apprehends that any object mentioned in a notification issued under section 18, sub-section (1), is in danger of being destroyed, removed, injured or allowed to fall into decay, the Local Government may pass orders for the compulsory purchase of such object at its market value, and the Collector shall thereupon give notice to the owner of the object to be purchased.

Purchase of sculptures, carvings or like objects by the Government.

(2) The power of compulsory purchase given by this section shall not extend to—

- (a) any image or symbol actually used for the purpose of any religious observance ; or
- (b) anything which the owner desires to retain on any reasonable ground personal to himself or to any of his ancestors or to any member of his family.

Excavations

20. (1) If the Local Government is of opinion that excavation within the limits of any local area ought to be restricted or regulated for the purpose of protecting or preserving any ancient monument, the Local Government may, by notification in the local official Gazette, make rules—

Power to Local Government to control excavation

- (a) fixing the boundaries of the area to which the rules are to apply, and
- (b) prescribing the authority by which, and the terms on which, licenses to excavate may be granted.

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication.

(3) A rule made under this section may provide that any person committing a breach thereof shall be punishable with fine which may extend to two hundred rupees.

(4) If any owner or occupier of land included in a notification under sub-section (1), proves to the satisfaction of the Local Government that he has sustained any loss by reason of such land being so included, the Local Government shall pay compensation in respect of such loss.

General.

21. (1) The market value of any property which Government is empowered to purchase at such value under this Act, or the amount of compensation to be paid by Government in respect of anything done under this Act, shall, where any dispute arises touching the amount of such market-value or compensation, be ascertained in the manner provided by the Land Acquisition Act, 1894. sections 3, 8 to 34, 45 to 47, 51 and 52, so far as they can be made applicable :

Assessment of market-value or compensation (a).

Provided that when making an inquiry under the said Land Acquisition Act, 1894, the Collector shall be assisted by two assessors,^(b) one of whom shall be a competent person nominated by the Collector. and one person nominated by the owner or, in case the owner fails to nominate an assessor within such reasonable time as may be fixed by the Collector in this behalf, by the Collector.

22. A Magistrate of the third class shall not have jurisdiction. jurisdiction to try any person charged with an offence against this Act.

23. (1) The Governor General in Council or the Local Government may make rules for carrying out any of the purposes of this Act.

Power to make rules.

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication.

24. No suit for compensation and no criminal proceeding shall lie against any public servant in respect of any act done, or in good faith intended to be done, in the exercise of any power conferred by this Act.

Protection to public servants acting under Act.

Case-law :—(a) Antiquities held to have no market-value ; if their acquisition would not prejudice claimant, no compensation is awardable, 16 M. 369—20 I.A. 80 (P.C.) (b) See 8 B. 553 ; 17 B. 299 ; 10 C. 769 ; 17 C. 380 ; 36 P.R. 1892.

THE APPRENTICES ACT, 1850.

(ACT XIX OF 1850.)

[Passed on the 11th April, 1850.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1850	XIX	Apprentices	Rep. in pt., Act XIV of 1870. " " Act XVI of 1874. Am., Act XII of 1891.

Concerning the binding of Apprentices.

FOR better enabling children, and especially orphans and poor children brought up by public charity, to learn trades, crafts and employments, by which, when they come to full age, they may gain a livelihood; It is enacted as follows:—

1. Any child, above the age of ten, and under the age of eighteen years may be bound apprentice by his or her father or guardian to learn any fit trade, craft or employment, for such term as is set forth in the contract of apprenticeship, not exceeding seven years, so that it be not prolonged beyond the time when such child shall be of the full age of twenty-one years, or, in the case of a female, beyond the time of her marriage.

2. The age set forth in the contracts shall be evidence of the age of the child, in all questions which arise as to the right of the master to the continuance of the service.

3. Any Magistrate or Justice of the Peace may act with all the powers of a guardian under the Act, on behalf of any orphan, or poor child abandoned by its parents, or of any child convicted before him, or any other Magistrate, of vagrancy, or the commission of any petty offence.

4. An orphan or poor child, brought up by any public charity, may be bound apprentice by the governors, directors or managers thereof, as his or her guardians for this purpose.

5. Any such boy may be bound as an apprentice in the sea service to any of Her Majesty's subjects, being the owner of any registered ship belonging to and trading from any port in the territories under the Government of * * * [1] India * [1] which has been declared to be a registering

Leg. Changes:—[1] The words "the East" before "India" and the word "Company" after the word "India" were repealed by the Repealing Act, XVI of 1874.

port under Act X, 1841, to be employed in any such ship the property of such person, commanded by a British subject, and, while so employed, to be taught the craft and duty of a seaman.

6. *[Apprenticing of such boy in ship of the East India Company.] Rep. by the Repealing and Amending Act, 1870 (XIV of 1870).*

7. The master or commander of any ship in which an apprentice bound to the sea service shall be appointed to serve by the party to whom he is bound, shall be deemed the agent of such party for the purpose of this Act.

Who to be agent of master of apprentice serving in ship.

8. Every contract of apprenticeship shall be in writing, according to the form given in the schedule (A) annexed to this Act, or to the like effect, which shall set forth the conditions agreed upon, particularly specifying the age of the apprentice, the term for which he is bound, and what he is to be taught.

Form and contents of contract of apprenticeship.

9. Every such contract shall be signed by the person to whom the apprentice is bound, and by the person by whom he is bound, and by the apprentice, when he is of the age of fourteen years or more at the time of binding; but when the apprentice is bound by the governors, directors or managers of a public charity, the signature of two of them, or of their secretary or officer shall be sufficient on behalf of the persons binding the apprentice.

Signatures to contract.

10. No such contract shall be valid unless it be executed in the manner aforesaid, nor until it has been deposited in the office of the Chief Magistrate of the place or district where it has been executed, or, if the apprentice is bound to the sea service, in the office of the person appointed under Act X, 1841, to make registry of ships at the port where the apprentice is to begin his service; and the person in whose office any such contract is deposited shall give to each of the parties a copy thereof, certified under his hand, which certified copies shall be received as evidence of the contract, without formal proof of the handwriting of the Magistrate or registering officer.

Contract not valid unless executed as prescribed and deposited.

Copies to be given to parties.

11. The terms of service may be changed at any time during the apprenticeship, or the contract may be determined, with the consent of both parties to the contract or their personal representatives, and with the consent of the apprentice if he is above the age of fourteen years: Provided that the changes agreed to or the termination of the contract shall be expressed in writing on the original contract, with the signature of the proper parties according to section [9] [1] of this Act; and the Magistrate or registering officer shall thereupon make under his hand

Alteration of terms of service and termination of contract.

Leg. Changes :—[1] The figure " 9 " was substituted for the figure " 8 " by the Amending Act, XII of 1891.

corresponding endorsements on the office copies, which shall be brought to him at the same time for that purpose.

12. The master of any apprentice bound under this Act may, with the consent of the person by whom he was bound, and with the consent of the apprentice, if he is above the age of fourteen years, assign such apprentice to any other person, who is willing to take him for the residue of his apprenticeship, and subject to the conditions thereof: Provided that such person shall, by endorsement under his own hand on the contract, declare his acceptance of such apprentice, and acknowledge himself bound by the agreements and covenants therein mentioned, to be performed on the part of the master, and that the consent of the other parties aforesaid shall be expressed in writing on the same, and signed by them respectively: And every such assignment shall be certified on the office copies of the contract under the hand of the Magistrate or registering officer according to the form given in schedule (B) annexed to this Act.

13. Upon complaint made to any Magistrate in the said territories, by or on behalf of any apprentice bound under this Act, of refusal or neglect to provide for him, or to teach him according to the contract of apprenticeship, or of cruelty, or other ill-treatment by his master, or by the agent under whom he shall have been placed by his master, the Magistrate may summon the master or his agent, as the case may be, if he shall be within his jurisdiction, to appear before him at a reasonable time, to be stated in the summons, to answer the complaint;

And at such time, whether the master or his agent be present or not (service of the summons being proved), may examine into the matter of the complaint; and, upon proof thereof, may cancel the contract of apprenticeship, and assess upon the offender, whether he shall be the master or his agent, a reasonable sum for behoof of the apprentice, not exceeding four times the amount of the premium paid upon the binding, or if no premium, or a less premium than fifty rupees was paid, not exceeding two hundred rupees;

And, if the offender shall not pay the sum so assessed, may levy the same by distress and sale of his goods and chattels, and, if the offender shall not be the master but his agent, by distress and sale of the goods and chattels of the master also.

14. No contract of apprenticeship shall be cancelled, nor shall any master or his agent be liable to any criminal proceeding, on account of such moderate chastisement for misbehaviour, given to any apprentice by his master or the agent of his master, as may lawfully be given by a father to his child; and the provision for enabling the contract of apprenticeship to be cancelled shall not bar any criminal proceeding against any master or his agent for an assault or other offence committed against his apprentice, for which he would be liable to be punished had it been against his child, whether or not any proceedings be taken for cancelling the contract of apprenticeship.

15. Upon complaint made to any Magistrate, by or on behalf of the master of any apprentice bound to him under this Act, of any ill-behaviour of such apprentice, or if such apprentice shall have absconded, the Magistrate may issue his warrant for apprehending such apprentice, and may hear and determine the complaint, and punish the offender by an order for keeping the offender, if a boy, in confinement in any debtor's prison or other suitable place, not being a criminal gaol, for any time not exceeding one month, of which one week may be in solitary confinement, during which time such allowance shall be made for his subsistence by the master or his agent as the Magistrate shall order; and, if the offender be a boy of not more than fourteen years of age, may order him to be privately whipped: or, if the offender be a girl or in the case of any boy, the Magistrate deem any such punishment unfit, he may pass an order empowering the master of the apprentice or his agent to keep the offender in close confinement in his own house, or on board the vessel to which he belongs, upon bread and water, or such other plain food as may be given without injury to the health of the apprentice, for a period not exceeding one month.

16. Upon complaint of wilful and repeated ill-behaviour on the part of the apprentice, and on the demand of the master, the Magistrate may order the contract of apprenticeship to be cancelled, whether or not the charge is proved; but only with the consent of the apprentice and of his father or guardian, if the charge is not proved; and such cancelling shall be with or without refund of the whole or part of any premium that may have been paid to the master on binding such apprentice, as to the Magistrate seems fit on consideration of the case; and all sums so refunded shall be applied under the direction of the Magistrate for behoof of the apprentice.

17. The Magistrate may order any sum recovered for behoof of the apprentice on cancelling the contract to be either laid out in binding him to another master, or otherwise for his benefit, or to be paid to the person by whom any premium was paid when he was bound apprentice.

18. No Magistrate shall entertain a complaint on the part of a master against an apprentice under this Act, unless it be brought within one month after the cause of complaint arose, or, if the cause of complaint arose on boardship during a voyage, within one month after the arrival thereof at a port or place in the said territories: and no Magistrate shall entertain a complaint on the part of an apprentice against his master or the agent of his master under this Act, unless it be brought within three months after the cause of complaint arose; or, if the cause of complaint arose on board ship during a voyage, within three months after the arrival thereof at a port or place in the said territories.

19. If the master of any apprentice shall die before the end of the apprenticeship, the contract of apprenticeship shall be thereby determined; and a proportionate part, corresponding to the unexpired portion of the term of any premium, which shall have been paid to such master on the binding of the apprentice to him, shall be returned by the executors or administrators out of the estate of the deceased to the person or persons who shall have paid the same; unless the executors or administrators of the deceased master shall continue the business in which such apprentice shall have been employed, and shall, within three months from the death of the late master, make offer in writing to keep the apprentice on the terms of the original contract; in which case the estate of the deceased shall be discharged from all liabilities on account of such premium.

Effect of death of master during apprenticeship.

Offer by representative of master to continue apprenticeship.

20. If such offer to keep the apprentice shall be made as aforesaid, the same shall be fully expressed and certified by the executors [or] [1] administrators on the original contract of apprenticeship, and also on the office-copies thereof, by the Magistrate or registering officer; and the apprentice shall be bound to the executors or administrators so keeping him for the remaining term of his apprenticeship.

Offer to be certified on original contract and copies.

21. Any apprentice bound under this Act, whose master shall die during the apprenticeship, shall be entitled to maintenance for three months from and after the death of his master, out of the assets left by him: Provided that during such three months such apprentice shall continue to live with, and serve as an apprentice, the executors or administrators of such master, or such person as they shall appoint.

Maintenance of apprentice whose master dies.

him: Provided that

Apprentice to continue to serve.

22. The apprentice of any person against whom a commission of bankruptcy shall be issued, or who shall be adjudged to have committed an act of insolvency, during the apprenticeship, shall be discharged from all obligation under the contract of apprenticeship; and, if any premium was paid on binding him as an apprentice, he or a person by whom he was bound shall be entitled to claim the amount thereof as a debt against the estate of the bankrupt or insolvent.

Effect of insolvency of master during apprenticeship.

23. For the purposes of this Act, all British subjects, wherever or of whatever parents born, as well as other persons in the territories under the Government of India * * [2] without the towns of Calcutta and Madras and the town and island of Bombay, shall be amenable to the jurisdiction of the Courts and Magistrates of India.

Persons amenable to jurisdiction of Magistrates' Courts.

Leg. Changes:—[1] The word "or" was substituted for the word "and" by the Amending Act, XII of 1891. [2] The words "the East" before "India" and the word "Company" after the word "India" were repealed by the Repealing Act, XVI of 1874.

24. An appeal shall lie from any order passed by any Magistrate without the said towns and island to the Court of Session to which such Magistrate is subordinate, provided the appeal is made within one month from the date of the order.

Appeal from orders
of Mofussil Magis-
trates.

25. In this Act the words "master," "owner," "person," and the pronoun "he" shall be understood to include several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless there is something in the context repugnant to such construction.

Interpretation of
terms.

SCHEDULE A.

FORM OF AGREEMENT.

This Agreement made the _____ day of _____ in the year _____ between A. B., of _____, and C. D. of _____ witnesseth that the said A. B. doth this day bind E. F., a boy (or girl) of the age of _____ years completed, son (or daughter) of the said A. B. (or otherwise describing the relation in which A. B. and E. F. stand), to dwell with and serve the said C. D., as an apprentice, from this day forth for _____ years (in the case of a girl add, or until the time of her marriage, which shall first happen), during all which term the said apprentice shall duly and faithfully serve the said C. D., according to his (or her) skill and ability in all lawful business, and demean and behave himself (or herself) honestly, orderly and obediently, in all things towards the said C. D. and his (or her) family. And the said C. D. for himself (or herself) and his (or her) executors and administrators, in consideration [of the pre-

If there is no premium, the words between brackets may be omitted.

mium or sum of _____ paid by the said A. B. to the said C. D. the receipt whereof the said C. D. hereby acknowledges, and] of the faithful service of the said E. F., doth covenant and agree with the said A. B., his (or her) executors and administrators, that he (or she) will teach or cause to be taught to the said E. F., in the best way and manner that he (or she) can, the trade (craft or employment) of a _____ during the said term; and will also, during the said term, find and allow unto the said apprentice good, wholesome, and sufficient food, clothes, lodging, washing, and all other things necessary, fit and reasonable for an apprentice: (and further, here insert any special covenants).

In witness whereof the parties have hereunto set their hands and seals, the day and year above written.

A. B.

L. S.

C. D.

L. S.

SCHEDULE B.

FORM OF ORDER OF ASSIGNMENT.

(To be endorsed on the Agreement).

Be it known to all men that on the
day of _____ in the year _____ personally appeared before
G.H., Magistrate of _____, *C.D.*, of _____ with *E.F.*, his (or her)
apprentice, and *J.K.*, of _____, and desired that the agreement of appren-
ticeship, whereby the said *E.F.* was bound to the said *C.D.* might be
assigned and made over to the said *J.K.*, and the said *G.H.*, having satisfied
himself, by personal examination of the said *E.F.*, and by other lawful

*If E. F. is not
above the age of four-
teen years, the words
between brackets may
be omitted.*

ways and means, that such assignment is for the benefit
of the said *E.F.*, and is made with the consent of (the
said *E.F.*, and of) all persons whose consent thereunto
by law is required, doth allow such assignment; and
the contract of apprenticeship whereby the said
E.F. was on the _____ day of _____ in the year _____ bound
to the said *C.D.* as an apprentice to learn the trade (craft or employment)
of a _____ shall henceforth endure, unto the end of the said term, as if
the said *J.K.* had been originally party to the said deed, and had executed
the same, in the place and stead of the said *C.D.*, and shall be bound, for
himself (or herself), his (or her) executors or administrators, to fulfil the
covenants by the said *C.D.* to be performed, and the said *E.F.* shall
henceforth be bound unto the said *J.K.*, in like manner as he (or she) was
by the said agreement bound unto the said *C.D.*

C.D.

E.F.

J.K.

In witness whereof the said *C.D.*, *E.F.*, and *J.K.* have hereunto set
their hands before me the day and year above written.

G.H., Magistrate.

THE ARMS ACT, 1878.

(ACT XI OF 1878.)

[Passed on the 15th March, 1878.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1841	XVIII	Export of Military Stores ...	Rep., Act XI of 1878.
1854	XXX	Customs Duties, Burma ...	Rep., in pt., Do.
1857	XXVIII	Arms and Ammunition ...	Rep., Act VIII of 1868.
1858	XIII	Unlawful Possession of Arms...	Do.
1859	XIX&XXVI	Arms and Ammunition continuing Act XXVIII of 1857.	Do.
1860	XXIX	Do. ...	Do.
1860	XXXI	Arms ...	Rep., Act XI of 1878.
1865	VI	Arms Act Continuance ...	Rep., Act VI of 1866.
1866	VI	Do. ...	Rep., Act XI of 1878.
1867	VII	Purchasing Arms from Soldiers.	Rep., Act XVI of 1888.
1872	Reg. III	Sonthal Parganas Settlement Regulation.	Rep. in pt., Act XI of 1878.
1878	XI	Arms ...	Rep. in pt., Act XII of 1891.

An Act to consolidate and amend the law relating to Arms, Ammunition and Military Stores.

WHEREAS it is expedient to consolidate and amend the law relating to arms, ammunition and military stores ; It is hereby
Preamble. enacted as follows :—

I.—Preliminary.

1. This Act may be called the Indian Arms
Short title, Local Act, 1878 ; and it extends to the whole of British
extent. India.

Savings. But nothing herein contained shall apply to—

- (a) arms, ammunition or military stores on board any sea-going vessel and forming part of her ordinary armament or equipment, or
- (b) the manufacture, conversion, sale, import, export, transport, bearing or possession of arms, ammunition or military stores by order of the Government, or by a public servant^(a) or a volunteer enrolled under the Indian Volunteers Act, 1869, in the course of his duty as such public servant or volunteer.

2. This Act shall come into force on such day as the Governor
Commencement. General in Council by notification in the Gazette of India appoints.

Case-law :—(a) Sale of arms by Court nazir in execution of decree exempted from operation of Act, 9 B. 518.

3. On and from that day the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule.

Repeal of enactments.

But all authorities and permissions given, licenses and exemptions granted, orders and appointments made, notifications published, and rules, conditions and forms prescribed, under any enactment hereby repealed, shall be deemed to be respectively given, granted, made published and prescribed under this Act.

And all such authorities, permissions, licenses and exemptions shall, except as otherwise provided by this Act, continue in force for the periods for which they may have been given or granted respectively, or where no such period is expressly fixed, for one year from the date on which this Act comes into force, and shall then cease to have effect.

Interpretation-clause.

4. In this Act, unless there be something repugnant in the subject or context,—

“cannon” includes also all howitzers, mortars, wall-pieces, mitrailleuses and other ordnance and machine-guns, all parts of the same, and all carriages, platforms and appliances for mounting, transporting and serving the same :

“arms” includes fire-arms (a), bayonets, swords, daggers, spears, spear-heads, and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms (b) :

“ammunition (c)” includes also all articles specially designed for torpedo service and submarine mining, rockets (d), gun-cotton, dynamite, lithofracteur and other explosive or fulminating material, gun-flints, gun-wads, percussion-caps, fuses and friction-tubes, all parts of ammunition (e) and all machinery (f) for manufacturing ammunition, but does not include lead, sulphur or saltpetre :

“military stores,” in any section of this Act as applied to any part of British India, means any military stores to which the Governor General in Council may from time to time, by notification in the Gazette of India, specially extend such section in such part, and includes also all lead, sulphur, saltpetre and other material to which the Governor General in Council may from time to time so extend such section :

“license” means a license granted under this Act, and “licensed” means holding such license.

Case-law:—(a) Includes parts of fire-arms, 21 C.L.J. 201=19 C.W.N. 706. (b) Test to find out whether weapon is fire-arm is, not whether it is serviceable, but whether it comes within legal definition of fire-arms, 21 M. 360, F.B.; 6 P.R. 1908, Cr.; 1 S.L.R. Cr. (F.B.) 19. Fire-arms include parts of fire-arms, 3 N.L.R. 53. Battle-axe is an arm, 1 Weir 654; so is a sword-stick, 34 C. 749; a sword-hilt, 38 P.R. 1889, Cr.; *chhavi*-heads, 20 P.R. 1900, Cr.; dagger shaped clasp knives, 3 L.B.R. 1; but not an air-gun not adapted for use with explosive substances which is only a toy, 4 Cr. L.J. 289; nor a pole axe which is a weapon consisting of a plain *lathi*, a blade and two moveable screws and so contrived that by loosening the screws the blades may be detached from the shaft made up of the *lathi*, 15 Cr. L.J. 685=26 Ind. Cas. 183. (c) Includes gun-powder, though intended only for manufacture of fire-works, but not if it has actually been made into fire-works, 8 M. 202. As to whether empty cartridges are, see *R. v. Ebrahim Alibhoy*, Bom. H.C., 4th May 1905 and 20 P.R. 1890, Cr. (d) Mean war-rockets and not fire-rockets, 5 M. 159. (e) Includes portions of that which would come within description of ammunition, *vis.*, empty cartridge cases, 7 Bom. L.R. 474; 7 A. L.J. 102. (f) Instrument for re-capping cartridge cases of Martini-Henri rifles is not machinery, 20 P.R. 1890, Cr.

II.—Manufacture, Conversion and Sale.

Unlicensed manufacture, conversion and sale prohibited. 5. No person shall manufacture, convert or sell^(a), or keep, offer or expose for sale, any arms, ammunition or military stores, except under a license and in the manner^(b) and to the extent permitted thereby.

Nothing herein contained shall prevent any person from selling any arms or ammunition which he lawfully possesses for his own private use to any person who is not by any enactment for the time being in force prohibited from possessing the same; but every person so selling arms or ammunition to any person other than a person entitled to possess the same by reason of an exemption under section 27 of this Act shall, without unnecessary delay, give to the Magistrate of the district, or to the officer in charge of the nearest police-station, notice of the sale and of the purchaser's name and address^(c).

III.—Import, Export and Transport.

Unlicensed importation and exportation prohibited. 6. No person shall bring or take by sea or by land into or out of British India any arms, ammunition or military stores except under a license and in the manner and to the extent permitted by such license.

Importation and exportation of arms and ammunition for private use. Nothing in the first clause of this section extends to arms (other than cannon) or ammunition imported or exported in reasonable quantities for his own private use by any person lawfully entitled to possess such arms or ammunition; but the Collector of Customs or any other officer empowered by the Local Government in this behalf by name or in virtue of his office may at any time detain such arms or ammunition until he receives the orders of the Local Government thereon.

Explanation.—Arms, ammunition and military stores taken from one part of British India to another by sea or across intervening territory not being part of British India, are taken out of and brought into British India, within the meaning of this section.

Sanction of Local Government required to warehousing of arms, etc. 7. Notwithstanding anything contained in the Sea Customs Act, 1878, no arms, ammunition or military stores shall be deposited in any warehouse licensed under section 16 of that Act without the sanction of the Local Government. VIII of 1878.

8. [*Levy of duties on arms, etc., imported by sea.*] *Repealed by the Repealing and Amending Act, XII of 1891.*

9. [*Power to impose duty on imports by land.*] *Repealed by the Repealing and Amending Act, XII of 1891.*

Power to prohibit transport. 10. The Governor General in Council may, from time to time, by notification in the Gazette of India,—

Case-law :—(a) Sale by agent of licensee not prohibited by section, 12 M. 478. (b) Refers to conditions under which license for weapon is given, 10 M. 181. (c) Court ordering sale of arms in execution of decree not covered by section, though Court may notify sale and vendee's name to Magistrate, 9 B. 518.

- (a) regulate or prohibit the transport of any description of arms, ammunition or military stores over the whole of British India, or any part thereof, either altogether or except under a license and to the extent and in the manner permitted by such license, and
- (b) cancel any such notification.

Transshipment of arms.

Explanation.—Arms, ammunition or military stores transhipped at a port in British India are transported within the meaning of this section.

11. The Local Government, with the previous sanction of the Governor General in Council, may, at any places along the boundary-line between British India and foreign territory, and at such distance within such line as it deems expedient, establish searching-posts at which all vessels, carts and baggage-animals, and all boxes, bales and packages in transit, may be stopped and searched for arms, ammunition and military stores by any officer empowered by such Government in this behalf by name or in virtue of his office.

Power to establish searching stations.

12. When any person is found carrying or conveying any arms, ammunition or military stores, whether covered by a license or not, in such manner or under such circumstances as to afford just grounds of suspicion that the same are being carried by him with intent to use them, or that the same may be used, for any unlawful purpose, any person may without warrant apprehend him and take such arms, ammunition or military stores from him.

Arrest of persons conveying arms, etc., under suspicious circumstances.

Procedure where arrest made by person not a Magistrate or a Police-officer.

Any person so apprehended, and any arms, ammunition or military stores so taken by a person not being a Magistrate or Police-officer, shall be delivered over as soon as possible to a Police-officer.

All persons apprehended by, or delivered to, a Police-officer, and all arms and ammunition seized by or delivered to any such officer, under this section, shall be taken without unnecessary delay before a Magistrate.

IV.—*Going armed and possessing Arms, etc.*

Prohibition of going armed without license.

13. No person shall go armed (a) with any arms except under a license (b) and to the extent and in the manner permitted thereby.

Any person so going armed without a license or in contravention of its provisions may be disarmed by any Magistrate, Police-officer or other person empowered by the Local Government in this behalf by name or by virtue of his office.

Case-law :—(a) Meaning of, 24 A. 454 ; 1 Weir 663 ; U.B.R. (1897-1901), Vol. I, 1 ; Presumption as to person going armed, 15 A. 27 ; section to be strictly construed, U.B.R. (1897-1901), 1 ; temporary possession not prohibited, 20 O. 444 ; 14 Bom. L. R. 964. (b) Which need not always be on the person of the particular individual when carrying arms, 2 O.C. 444 ; 1 Weir 661 ; which need not be taken for spears in the Bombay Presidency, Rat. Un. Cr. C. 507 ; which when given for the purpose of protection merely extends to the killing of sport also, 5 M. 26 ; exemption by Local Government from operation of section limited to personal use, A.W.N. (1899) 213.

14. No person shall have in his possession^(a) or under his control any cannon or fire-arms^(b), or any ammunition or military stores, except^(c) under a license and in the manner and to the extent permitted thereby.

Unlicensed possession of fire-arms, etc.

[1] * * * * *

15. In any place to which section 32, clause 2, of ^[2] Act No. XXXI of 1860 applies at the time this Act comes into force or to which the Local Government, with the previous sanction of the Governor General in Council, may by notification in the local official Gazette specially extend this section, no person shall have in his possession any arms of any description, except under a license and in the manner and to the extent permitted thereby.

Possession of arms of any description without license prohibited in certain places.

16. Any person possessing arms, ammunition or military stores, the possession whereof by him has, in consequence of the cancellation or expiry of a license or by the issue of a notification under section 15, become unlawful, shall deposit the same without unnecessary delay with the officer in charge of the nearest police-station.

Arms of which possession has become unlawful to be deposited at police-station.

If the owner of anything deposited under this section does not within three years from the date on which such thing is so deposited produce a license authorising him to possess the same and apply for delivery of the same, such thing shall be forfeited^(d) to His Majesty.

V.—Licenses.

17. The Governor General in Council may, from time to time by notification in the Gazette of India, make rules to determine the officers^(e) by whom, the form in which, and the terms and conditions, on and subject to which, any license shall be granted; and may by such rules among other matters—

Power to make rules as to licenses.

- (a) fix the period for which such license shall continue in force;
- (b) fix a fee payable by stamp or otherwise in respect of any such license granted in a place to which section 32, clause 2, of ^[2] Act No. XXXI of 1860, applies at the time this Act comes into force, or in respect of any such license other than a license for possession granted in any other place;

Leg. Changes :—[1] The last three paragraphs of this section were repealed by the Repealing and Amending Act, XII of 1891. [2] Act XXXI of 1860 was repealed by S. 3 of this Act.

Case-law :—(a) What constitutes possession, 28 A. 302; 4 N.L.R. 78; mere temporary possession acquired for using the arms on an emergency is not punishable, 35 C. 219; nature of evidence required to prove that possession and control of arms, found in a joint family house, are with some member of family, 15 A. 129; possession of arms found in common room of house occupied by father and son, 52 P.R. 1905. Cr.; section does not prohibit possession of spear without license, 2 L.W. 532=29 Ind. Cas. 544. (b) Includes parts of fire-arms, 21 C.L.J. 201=19 C.W.N. 706. (c) Reservist cannot be prosecuted for possessing double-barrelled gun without license, 1 P.R. 1902, Cr.; so, also, a volunteer, 22 A. 323; and a commissioned officer of the Native army, 27 P.R. 1885, Cr. (d) Confiscation on account of mere delay in renewing license, illegal, 15 Cr. L.J. 21=22 Ind. Cas. 165. (e) When granting license, District Magistrate is not a Court, 4 N.L.R. 134.

- (c) direct that the holder of any such license other than a license for possession shall keep a record or account, in such form as the Local Government may prescribe, of anything done under such license, and exhibit such record or account when called upon by an officer of Government to do so ;
- (d) empower any officer of Government to enter and inspect any premises in which arms, ammunition or military stores are manufactured or kept by any person holding a license of the description referred to in section 5 or section 6 ;
- (e) direct that any such person shall exhibit the entire stock of arms, ammunition and military stores in his possession or under his control to any officer of Government so empowered ; and
- (f) require the person holding any license or acting under any license to produce the same, and to produce or account for the arms, ammunition or military stores covered by the same when called upon by an officer of Government so to do.

Cancelling and suspension of license.

18. Any license may be cancelled or suspended—

- (a) by the officer by whom the same was granted, or by any authority to which he may be subordinate, or by any Magistrate of a District, or Commissioner of Police in a presidency-town, within the local limits of whose jurisdiction the holder of such license may be, when, for reasons to be recorded in writing, such officer, authority, Magistrate or Commissioner deems it necessary for the security of the public peace to cancel or suspend such license ; or
- (b) by any Judge or Magistrate before whom the holder of such license is convicted of an offence against this Act, or against the rules made under this Act ; and

the Local Government may at its discretion, by a notification in the local official Gazette, cancel or suspend all or any licenses throughout the whole or any portion of the territories under its administration.

VI.—Penalties.

For breach of sections 5, 6, 10, 13 to 17.

19. Whoever commits any of the following offences (a) (namely) :—

- (a) manufactures, converts or sells, or keeps (b), offers or exposes for sale, any arms (c), ammunition or military stores in contravention of the provisions of section 5 ;
- (b) (d) fails to give notice as required by the same section ;
- (c) imports or exports any arms, ammunition or military stores in contravention of the provisions of section 6 (e) ;
- (d) transports any arms, ammunition or military stores in contravention of a regulation or prohibition issued under section 10 ;

Case-law :—(a) Offences under this section are bailable, see Cr. Pro. Code, Sob. II. (b) i.e., keeps for sale, 19 O.W.N. 206=21 C.L.J. 201. (c) Clasp knives with outer edge narrowing are not, 25 Ind. Cas. 337=7 Bur.L.T. 165=15 Cr. L.J. 585 ; but a *chavvi* is, 24 Ind. Cas. 594=15 Cr. L.J. 506=33 P.L.R. 1914=1 P.W.R. 1914 (Cr.). (d) No offence if gun is found in abandoned room accessible to several persons, 21 O.W.N. 839. (e) Landing in British India with revolver not in lawful possession is offence, 35 M. 596.

- (e) goes armed (a) in contravention of the provisions of section 13 ;
- (f) has in his possession or under his control any arms, (b) ammunition or military stores in contravention of the provisions of section 14 or section 15 (c) ;
- (g) intentionally makes any false entry in a record or account which, by a rule made under section 17, clause (c), he is required to keep ;
- (h) intentionally fails to exhibit anything which, by a rule made under section 17, clause (e), he is required to exhibit ; or
- (i) fails to deposit arms, ammunition or military stores, as required by section 14 or section 16 ;

shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

20. (d) Whoever does any act (e) mentioned in clauses (a), (c), (d) or

For secret breaches
of sections 5, 6, 10,
14 and 15.

(f) of section 19, in such manner as to indicate an intention (f) that such act may not be known to any public servant as defined in the Indian Penal Code, or to any person employed upon a railway or to the XLV of 1860.
servant of any public carrier (g),

For concealing
arms, etc.

and whoever, on any search being made under section 25, conceals (h) or attempts to conceal (i) any arms, ammunition or military stores,

Case law :—(a) Exemption for personal use given to any person does not extend to servant, 14 C.P.L.R. 112 ; 4 S.L.R. 214 ; but see 22 A. 118 ; Second Class Magistrate not to try offence under S. 19 (e), 1 Weir 660. (b) *E.g., chavvi*, 24 Ind. Cas. 594 = 1 P.W.R. 1914, Cr. ; 7 Cr. L.R. 480. (c) The articles discovered must be clearly proved to have been in the possession of the accused, 17 Cr. L.J. 512 = 36 Ind. Cas. 480 = 10 Bur. L.T. 121 ; person liable to punishment under clause (f), 15 C.W.N. 440 ; 14 Bom. L.R. 501 ; minor actually in possession of arms without license guilty of offence, 16 A.L.J. 323 ; temporary possession by servant on behalf of master no offence, 17 C.W.N. 979 = 41 C. 11 ; nor where master is exempted from the provisions of the Act, 38 Ind. Cas. 329 = 9 Cr. L.R. 197 ; prosecution for offence under S. 19 (f) should be instituted with previous sanction of District Magistrate, failure to do so vitiating trial, 12 Cr. L.J. 234 = 9 M.L.T. 475 ; see, also, 21 Ind. Cas. 1003 = 24 P.R. 1913, Cr. ; 8 L.B.R. 452 = 17 Cr. L.J. 209 = 34 Ind. Cas. 321 = 9 Bur. L.T. 217. **F.B.** possession of arms without license collected in temple for worship is illegal, 8 C. 473 ; of revolver out of repair without license, 6 P.R. 1908, Cr. ; 21 M. 360. **F.B.** ; of Quackenbush rifle in Kohat district without license, 1 P.W.R. 1913 (N.W.F.P.) Cr. ; revolver found in pocket of one of two persons sitting together, 30 Ind. Cas. 461 = 16 Cr. L.J. 637 = 27 P.W.R. 1915, Cr. ; extension of time for renewing license keeps previous license alive, 3 C.W.N. 394 ; possession of gunpowder without license is illegal, 8 M. 202 ; of saltpetre in Khandesh District needs no license, Rat. Un. Cr. C. 247. (d) Directly applies only to cases of attempted export or import, but not to ordinary concealment of arms, 9 P.R. 1912, Cr. ; 1 P.W.R. 1914, Cr. = 24 Ind. Cas. 594. (e) *E.g.*, concealment in loin cloth, 8 P.R. 1915, Cr. = 28 Ind. Cas. 796 ; burying revolver and bullet in a field, 33 Ind. Cas. 823 = 24 P.W.R. 1916 (Cr.). (f) See 21 C.L.J. 201 = 19 O.W.N. 701. (g) To sustain conviction under first paragraph of section District Magistrate's previous sanction essential, 27 C. 692 = 4 C.W.N. 750 ; see, also, 4 L.B.R. 247 = 8 Cr. L.J. 65. (h) Concealment must be by some overt act, and not by mere denial to Police Officer, 28 A. 302 = 3 Cr. L.J. 86 ; first part of section inapplicable to concealments or attempts at concealment made only after arrest of person who has immediate personal possession of arms in any way, 9 M.L.T. 475 = 12 Cr. L.J. 234 ; concealment from gaze of visitors held no offence under S. 20, but only under S. 19 (f), 1 S.L.R. 18. Cr. (i) Fact of finding of arms after arrest and pending prosecution of conspirators is admissible in evidence, 16 C.W.N. 1105.

shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

21. Whoever, in violation of a condition subject to which a license has been granted, does or omits to do any act shall, when the doing or omitting to do such act is not punishable under section 19 or section 20, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

For breach of license.
For knowingly purchasing arms, etc., from unlicensed person.

For delivering arms, etc., to person not authorised to possess them.

22. Whoever knowingly purchases any arms, ammunition or military stores from any person not licensed or authorised under the proviso to section 5 to sell the same; or

delivers (a) any arms, ammunition or military stores into the possession of any person without previously ascertaining that such person is legally authorised to possess the same,

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

23. Any person violating any rule made under this Act, and for the violation of which no penalty is provided by this Act, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Penalty for breach of rule.

24. When any person is convicted of an offence punishable under this Act, committed by him in respect of any arms, ammunition or military stores, it shall be in the discretion of the convicting Court or Magistrate further to direct that the whole or any portion of such arms, ammunition or military stores, and any vessel, cart or baggage-animal used to convey the same, and any box, package or bale in which the same may have been concealed, together with the other contents of such box, package or bale, shall be confiscated (b).

Power to confiscate.

VII.—Miscellaneous.

25. Whenever any Magistrate has reason to believe that any person residing within the local limits of his jurisdiction has in his possession any arms, ammunition or military stores for any unlawful purpose,

or that such person cannot be left in the possession of any such arms, ammunition or military stores without danger to the public peace,

such Magistrate, having first recorded (c) the grounds of his belief, may cause a search (d) to be made of the house or premises occupied by such person or in which such Magistrate has reason to believe such arms,

Case-law :—(a) Delivery into possession contemplated by section, nature of, 5 L.B.R. 83; 4 N.L.R. 78; 16 A. 276; sale by agent of licensed vendor to person without ascertaining whether such person is legally authorised to possess same, will render licensed vendor liable irrespective of his want of consent, 24 B. 423. (b) Only on conviction, 1 Weir 664. (c) Recording grounds of belief is essential before search is ordered, 36 C. 433; 15 A. 129. (d) Search warrant should be issued when arms, etc., are possessed for 'illegal purpose' or when there is danger to public peace, 8 C. 473; and only when it is warranted by some Statute, 9 C.L.J. 298—36 C. 433; search by night not illegal, 4 P.L.R. 481.

ammunition or military stores are or is to be found, and may seize and detain the same, although covered by a license, in safe custody for such time as he thinks necessary.

The search in such cases shall be conducted by, or in the presence of, a Magistrate, or by, or in the presence of, some officer specially empowered in this behalf by name or in virtue of his office by the Local Government.

26. The Local Government may at any time order or cause to be seized any arms, ammunition or military stores in the possession of any person, notwithstanding that such person is licensed to possess the same, and may detain the same for such time as it thinks necessary for the public safety.

Seizure and detention by Local Government.

27. The Governor-General in Council^(a) may, from time to time, by notification, published in the Gazette of India,—

Power to exempt.

- (a) exempt any person by name or in virtue of his office, or any class of persons, or exclude any description of arms or ammunition, or withdraw any part of British India, from the operation of any prohibition or direction contained in this Act; and
- (b) cancel any such notification, and again subject the persons or things or the part of British India comprised therein to the operation of such prohibition or direction.

28. Every person aware of the commission of any offence punishable under this Act shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest Police-officer or Magistrate, and

Information to be given regarding offences.

every person employed upon any railway or by any public carrier shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information to the nearest Police-officer regarding any box, package or bale in transit which he may have reason to suspect contains arms, ammunition or military stores in respect of which an offence against this Act has been or is being committed.

29. Where an offence punishable under section 19, clause (f), has been committed within three months from the date on which this Act comes into force in any province, district or place to which section 32, clause 2, of Act XXXI of 1860 [1] applies at such date, or where such an offence has been committed in any part of British India not being such a district, province or place, no proceedings shall be instituted against any person in respect of such offence without the previous sanction (b) of the Magistrate of the District or, in a presidency-town, of the Commissioner of Police.

Sanction required to certain proceedings under section 19, clause (f).

Leg. Changes :—[1] Act XXXI of 1860 was repealed by S. 3 of this Act.

Case-law :—(a) Indian Army Regulation does not restrict powers of Governor General in Council under S. 27, 1 P.R. 1903, Cr. (b) Conviction under S. 19 (f), without the previous sanction is bad in law, 5 M.L.T. 162; 4 L.B.R. 247=8 Cr. L.J. 65; 9 M.L.T. 475=10 Ind. Cas. 261; 8 L.B.R. 452; 34 Ind. Cas. 421; 9 Bur. L.T. 217; for case where no sanction was held necessary, see 24 P.R. 1913, Cr.

X of 1882.
IV of 1877.

Searches in the case of offences against section 19, clause (f), how conducted.

30. (a) Where a search is to be made under the Code of Criminal Procedure, 1882, or the Presidency Magistrates Act, 1877, [1] in the course of any proceedings instituted in respect of an offence punishable under section 19, clause (f), such search shall, notwithstanding anything contained in the said Code or Act [1], be made in the presence of some officer specially appointed by name or in virtue of his office by the Local Government in this behalf, and not otherwise.

31. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it or from being liable under such other law to any higher punishment or penalty than that provided by this Act: Provided that no person shall be punished twice for the same offence.

Operation of other laws not barred.

32. The Local Government may from time to time, by notification in the local official Gazette, direct a census to be taken of all fire-arms in any local area, and empower any person by name or in virtue of his office to take such census.

Power to take census of fire-arms.

On the issue of any such notification, all persons possessing any such arms in such area shall furnish to the person so empowered such information as he may require in reference thereto, and shall produce such arms to him if he so requires.

Any person refusing or neglecting to produce any such arms when so required shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

33. No proceeding other than a suit shall be commenced against any person for anything done in pursuance of this Act, without having given him at least one month's previous notice in writing of the intended proceeding and of the cause thereof, nor after the expiration of three months from the accrual of such cause.

Notice and limitation of proceedings.

Leg. Changes:—[1] For the references to the Code of Criminal Procedure, 1882, and the Presidency Magistrates Act, 1877, read now Criminal Procedure Code, Act V of 1898.

Case-law:—(a) Search made by an officer-in-charge of a reporting station without a warrant from a Magistrate not illegal, 16 A.L.J. 721.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 3.)

Number and year.	Title.	Extent of Repeal.
XVIII of 1841 ...	An Act for consolidating and amending the enactments concerning the exportation of Military Stores.	So much as has not been repealed.
[1] XXX of 1854 ...	An Act to provide for the levy of duties of Customs in the Arracan, Pegu, Martaban and Tenasserim Provinces.	In the preamble, the words "and that the exportation of munitions of war from any of these Provinces into foreign States should be prohibited." Section 11.
XXXI of 1860 ...	An Act relating to the manufacture, importation and sale of Arms and Ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases.	So much as has not been repealed.
VI of 1866 ...	An Act to continue Act No. XXXI of 1860 (relating to the manufacture, importation and sale of Arms and Ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases) and for other purposes.	The whole.
III of 1872 ...	The Sonthal Parganas Settlement Regulation.	So much of the schedule [2] as relates to Act XXXI of 1860 and Act VI of 1866.
IX of 1874 ...	The Arakan Hills District Laws Regulation, 1874.	So much of the schedule as relates to Act XVIII of 1841.
XV of 1874 ...	An Act for declaring the local extent of certain enactments and for other purposes.	So much of the first schedule as relates to Act XVIII of 1841.*

THE SECOND SCHEDULE.

ARMS, ETC., LIABLE TO DUTY.

[Repealed by the Repealing and Amending Act, XII of 1891.]

Leg. Changes:—[1] This Act was repealed by the Upper Burma Laws Act, XX of 1886, which has since then been repealed in turn by the Burma Laws Act, XIII of 1898. [2] A new schedule has since been substituted for the Schedule here mentioned—see Bengal Code, Vol. I.

THE ARMY ACT, 1911.[4]

(ACT VIII OF 1911.)

[Passed on the 16th March, 1911.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1837	XIII	Courts-Martial ...	Rep., Act VIII of 1868.
1839	XXIII	Do. ...	Rep., Act XXIX of 1861.
1840	II	Do. ...	Do.
1841	XI	Military Courts of Requests ...	Rep., Act VIII of 1867.
1841	XVIII	Export of Military Stores ...	Rep., Act XI of 1878.
1842	XII	Military Bazaars ...	Rep., Act VIII of 1867.
1844	VIII	Native Military Convicts ...	Rep., Act VII of 1850.
1845	XV	Native Soldiers ...	Rep., Act X of 1872.
1845	XX	Native Army, Articles of War. ...	Rep., Act XIX of 1847.
1847	IV	Military Magistrates ...	Rep., Act VIII of 1868.
1847	XIX	Articles of War, Native Army. ...	Rep., Act XXIX of 1861.
1849	XIV	Tampering with Army or Navy ...	Rep., Act XVII of 1862.
1850	VI	Military Offences ...	Rep., Act XXIX of 1861.
1850	XXXVI	Amending Articles of War for Native Army. ...	Do.
1856	X	Native Articles of War ...	Do.
1857	VIII	Courts-Martial ...	Do.
1857	XIV	Military and State Offences ...	Rep., Act VIII of 1868.
1857	XVII	Mutineers and Deserters ...	Do.
1857	XXXII	Native Articles of War ...	Rep., Act XXIX of 1861.
1860	VI	Do. ...	Do.
1861	XXIX	Do. ...	Rep., Act V of 1869.
1865	XXVI	Amending Native Articles of War. ...	Do.
1869	V	Articles of War ...	Rep., Act VIII of 1911.
For further Acts, see the Schedule to Act VIII of 1911, <i>infra</i> .			
1911	VIII	Army ...	Am., Act XV of 1914. Am., Act X of 1917. Am., Act XI of 1918.

An Act to consolidate and amend the law relating to the government of His Majesty's Indian Forces.

WHEREAS it is expedient to consolidate and amend the law relating to the government of the Indian officers, soldiers and other persons in His Majesty's Indian Forces; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title and commencement. 1. (1) This Act may be called the Indian Army Act, 1911.

(2) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, direct in this behalf.

Leg. Changes:—[1] The expressions "Native" and "a Native" wherever they occurred in this Act have been substituted by the expressions "Indian" and "an Indian" by Act XI of 1918.

Application of Act.

Persons subject to Act. 2. (1) The following persons shall be subject to this Act, namely :—

- (a) Indian officers and warrant-officers ;
- (b) persons enrolled under this Act ;
- (c) persons not otherwise subject to military law, who, on active service in camp, on the march, or at any frontier post specified by the Governor General in Council by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, His Majesty's Forces :

[1]

(2) Every person subject to this Act under sub-section (1), clause (a) or (b), shall remain so subject until duly discharged or dismissed.

Special provision as to rank in certain cases. 3. (1) The Governor General in Council may, by notification, direct that any persons or class of persons subject to this Act under section 2, sub-section (1), clause (c), shall be so subject as Indian officers, warrant officers or non-commissioned officers, and may authorize any officer to give a like direction with respect to any such person and to cancel such direction.

(2) All persons subject to this Act other than officers, warrant officers and non-commissioned officers shall, if they are not persons in respect of whom a notification or direction under sub-section (1) is in force, be deemed to be of a rank inferior to that of a non-commissioned officer.

Commanding officer of persons subject to military law under section 2, clause (c). 4. Every person subject to this Act under section 2, sub-section (1), clause (c), shall, for the purposes of this Act, be deemed to be under the commanding officer of the corps, department or detachment (if any) to which he is attached, and if he is not attached to any corps, department or detachment, under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person may for the time being be serving, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said officer commanding the force :

Provided that an officer commanding a force shall not place a person under the command of an officer of official rank inferior to that of such person if there is present at the place where such person is any officer of higher rank under whose command he can be placed.

Powers to apply Act to certain forces under the Government of India. 5. (1) The Governor General in Council may, by notification, apply all or any of the provisions of this Act to any force raised and maintained in India under the authority of the Governor General in Council.

(2) While any of the provisions of this Act apply to any such force, the Governor General in Council may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of that force.

Leg. Changes:—[1] The proviso to sub-section (1) was repealed by Act XI of 1918.

Officers to exercise powers in certain cases.

6. [1] (1) Whenever persons subject to this Act are serving—

- (a) out of India under an officer not subject to the authority of the Governor General in Council, or
- (b) in India under an officer commanding any military organization not in this section specifically named, and being, in the opinion of the Governor General in Council, not less than a brigade,

the Governor General in Council may prescribe the officer by whom the powers which, under this Act, may be exercised by officers commanding armies, army corps, divisions and brigades, shall, as regards such persons, be exercised.

(2) The Governor General in Council may confer such powers either absolutely, or subject to such restrictions, reservations, exceptions and conditions as he may think fit.

Definitions.

Definitions. 7. In this Act, unless there is something repugnant in the subject or context,—

(1) "British officer" means a person holding a commission in His Majesty's land forces :

(2) "Indian officer" means a person commissioned, gazetted or in pay as an officer holding an Indian rank in His Majesty's Indian Forces :

(3) "warrant officer" means a person appointed, gazetted or in pay as an Indian warrant officer in His Majesty's Indian Forces :

(4) "non-commissioned officer" means a person attested under this Act holding an Indian non-commissioned rank in His Majesty's Indian Forces, and includes an acting non-commissioned officer :

(5) "officer" means a British officer or Indian officer, but does not include a warrant officer or non-commissioned officer :

(6) "commanding officer," when used in any provision of this Act with reference to any separate portion of His Majesty's forces or to any department, means the British officer whose duty it is under the regulations of the army, or, in the absence of any such regulation, by the custom of the service, to discharge with respect to that portion of the forces or that department the functions of commanding officer in regard to matters of the description referred to in that provision :

(7) "superior officer," when used in relation to a person subject to this Act, includes a warrant officer and a non-commissioned officer ; and, as regards persons placed under his orders, a warrant officer or non-commissioned officer subject to the Army Act :

Leg. Changes :—[1] This sub-section was substituted for the original sub-section by Act XI of 1918. The original sub-section ran as follows :—

Whenever persons subject to this Act are serving out of India under an officer not subject to the authority of the Governor General in Council, the Governor General in Council may prescribe the officer by whom the powers which, under this Act, may be exercised by officers commanding armies, divisions and brigades, shall, as regards such persons, be exercised.

Officers to exercise powers in case of foreign service.

[1] (8) "army," "army corps," "division" and "brigade" mean respectively an army, army corps, division or brigade which is under the command of an officer subject to the authority of the Governor General in Council or, when on active service, an army, army corps, division or brigade under the command of an officer holding a commission in His Majesty's land Forces :

(9) "corps" means any separate body of persons subject to this Act, or the Army Act, which is prescribed as a corps for the purposes of all or any of the provisions of this Act :

(10) "independent brigade" means a brigade which does not form part of a division :

(11) "department" includes any division or branch of a department :

(12) "enemy" includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of a person subject to military law to act :

(13) "active service," as applied to a person subject to this Act, means the time during which such person is attached to, or forms part of, a force which is engaged in operations against an enemy, or is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country :

(14) "military custody" means the arrest or confinement of a person according to the usages of the service :

(15) "military reward" includes any gratuity or annuity for long service or good conduct, any good conduct pay, good service pay or pension, and any other military pecuniary reward :

(16) "court-martial" means a court-martial held under this Act :

(17) "criminal court" means a court of ordinary criminal justice in British India, or established elsewhere by the authority of the Governor General in Council :

(18) "civil offence" means an offence which, if committed in British India, would be triable by a criminal court :

(19) "offence" means any act or omission punishable under this Act, and includes a civil offence as hereinbefore defined :

(20) "notification" means a notification published in the Gazette of India :

(21) "prescribed" means prescribed by rules made under this Act : and

(22) all words and expressions used herein and defined in the Indian Penal Code and not hereinbefore defined shall be deemed to have the XLV of 1860, meanings respectively attributed to them by that Code.

CHAPTER II.

ENROLMENT AND ATTESTATION,

Enrolment.

8. Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of the service for which he is to be enrolled ; and shall put to him

Leg. Changes:—[1] Substituted by Act XI of 1918.

the questions set forth in the prescribed form of enrolment, and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record, or cause to be recorded, his answer to each such question.

9. If, after complying with the provisions of section 8, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if he perceives no impediment, he shall sign [1] and shall also cause the person to sign [1] the enrolment paper, and the person shall then be deemed to be enrolled.

10. Every person who has for the space of six months been in the receipt of military pay and been borne on the rolls of any corps or department * * * [2] shall be deemed to have been duly enrolled, and shall not be entitled to claim his discharge on the ground of illegality or irregularity in his enrolment.

Attestation.

11. The following persons shall be attested, namely:—

- (a) all persons enrolled as combatants ;
- (b) all other enrolled persons prescribed by the Governor General in Council.

12. (1) When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmation shall be administered to him in the prescribed form by his commanding officer, in front of his corps or such portion thereof or such members of his department as may be present, or by any other prescribed person.

(2) The form of oath or affirmation prescribed under this section shall contain a promise that the person to be attested will be faithful to His Majesty, His heirs and successors, and that he will serve in His Majesty's Indian Forces and go wherever he is ordered by land or sea, and that he will obey all commands of any officer set over him, even to the peril of his life.

(3) The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper, and authenticated by the signature of the officer administering the oath or affirmation.

CHAPTER III.

DISMISSAL AND DISCHARGE.

Dismissal by Governor General in Council and Commander-in-Chief in India.

13. The Governor General in Council or the Commander-in-Chief in India may dismiss from the service any person subject to this Act.

Leg. Changes:—[1] These words were inserted by Act XI of 1918. [2] The words " (of which the last pay statement, if produced, shall be evidence) " were repealed by Act XI of 1918.

Dismissal by officer commanding army, division, brigade, etc.

14. An officer commanding an army, [1] army corps, division or brigade, or any prescribed officer, may dismiss from the service any person serving under his command other than an Indian officer.

15. *Dismissal of convicts.*—[*Repealed by Act XI of 1918.*]

16. The prescribed authority may, in conformity with any rules prescribed in this behalf, discharge from the service any person subject to this Act.

17. Every enrolled person who is dismissed or discharged from the service shall be furnished by his commanding officer with a certificate, in the English language and in the mother tongue of such person (when his mother tongue is not English), setting forth—

- (a) the authority dismissing or discharging him ;
- (b) the cause of his dismissal or discharge ;
- (c) the full period of his service in the army.

18. (1) Any person enrolled under this Act who is entitled under the conditions of his enrolment to be discharged, or whose discharge is ordered by competent authority, and who, when he is so entitled or ordered to be discharged, is serving out of India, and requests to be sent to India, shall, before being discharged, be sent to India with all convenient speed.

(2) Any person enrolled under this Act who is dismissed from the service and who, when he is so dismissed, is serving out of India, shall be sent to India with all convenient speed.

[2] Provided that, where any such person is sentenced to dismissal combined with any other punishment, such other punishment, or, in the case of a sentence of transportation or imprisonment, a portion of such other punishment, may be inflicted before he is sent to India.

(3) [*Repealed by Act XI of 1918.*]

CHAPTER IV.

SUMMARY REDUCTION AND PUNISHMENTS OTHERWISE THAN BY ORDER OF COURT-MARTIAL.

19. (1) The Commander-in-Chief in India, an officer commanding an army, [1] army corps, division or brigade, or any prescribed officer, may reduce to a lower grade or to the ranks any non-commissioned officer under his command.

(2) The commanding officer of an acting non-commissioned officer may order him to revert to his permanent grade as a non-commissioned officer or, if he has no permanent grade above the ranks, to the ranks.

Leg. Changes:—[1] The words 'army corps' were inserted by Act XI of 1918.

[2] This proviso was added by S. 7 of Act XI of 1918.

20. (1) The Commander-in-Chief in India may, subject to the control of the Governor General in Council, specify the minor punishments to which persons subject to this Act shall be liable without the intervention of a court-martial, and the officer or officers by whom, and the extent to which, such minor punishments may be awarded.

(2) Imprisonment in military custody may be specified as such a minor punishment, provided that—

(a) the term of such imprisonment shall not exceed twenty-eight days; and

(b) it shall not be awarded to any person of, or above the rank of, non-commissioned officer, or who, when he committed the offence in respect of which it is awarded, was of, or above, such rank.

21. Whenever any weapon or part of a weapon forming part of the equipment of a half squadron, battery, company or other similar unit is lost or stolen, the officer commanding the army, [1] army corps, division or independent brigade to which such unit belongs may, after obtaining the report of a court of inquiry, impose a collective fine upon the Indian officers, non-commissioned officers and men of such unit, or upon so many of them as, in his judgment, should be held responsible for such loss or theft.

22. (1) For any offence, in breach of good order, the commanding officer of any corps or detachment on active service, in camp, on the march, or at any frontier post specified by the Governor General in Council by notification in this behalf at which troops are stationed, may punish any Indian follower of such corps or detachment who is subject to this Act under section 2, sub-section (1), clause (c)—

Punishment of certain Indian followers.

(a) if such follower is not a menial servant, with imprisonment for a term which may extend to thirty days, or with fine which may extend to fifty rupees;

(b) if such follower is a menial servant, with imprisonment for a term which may extend to seven days, or, if on active service, with corporal punishment not exceeding twelve strokes of a rattan.

(2) Imprisonment awarded under this section may be carried out in a military guard, or in a jail, as ordered by the said commanding officer; and the officer in charge of any jail shall, on the delivery to him of the person of the offender, with a warrant, under the hand of the said commanding officer, detain the offender according to the exigency of the warrant or until he is discharged by due course of law.

Provost-Marshals.

23. For the prompt and instant repression of irregularities and offences committed in the field or on the march, provost-marshals may be appointed by the Commander-in-Chief in India or an officer commanding an army, [1] army corps, division

Appointment.

Leg. Changes:—[1] The words 'army corps' were inserted by Act XI of 1918.

or independent brigade, or an officer commanding the forces in the field ; and the powers and duties of such provost-marshals shall be regulated according to the established custom of war and the rules of the service.

24. (1) The duties of a provost-marshal so appointed are to take charge of prisoners confined for offences of a general description, to preserve good order and discipline, and to prevent breaches of the same by persons belonging or attached to the army.

(2) The provost-marshal may punish, corporally, then and there, any person subject to this Act below the rank of non-commissioned officer who, on active service and in his view or in the view of any of his assistants, commits any breach of good order and military discipline :

Provided that such punishment shall be limited to the necessity of the case, and shall accord with the orders which the provost-marshal may from time to time receive from the officer commanding the troops, and shall be inflicted with the regulation cat :

Provided also that the orders of the said commanding officer shall in no case authorise such corporal punishment in excess of that awardable by sentence of a court-martial.

(3) If the offender is not on active service, or if the actual commission of the offence is not witnessed by the provost-marshal or any of his assistants, but sufficient proof can be obtained of the offender's guilt, he shall report the case to the officer commanding the troops, who shall deal with the case as he may deem most conducive to the maintenance of good order and military discipline.

CHAPTER V.

OFFENCES.

Offences in respect of Military Service.

Offences punishable with death.

25. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) shamefully abandons or delivers up any garrison, fortress, post or guard committed to his charge, or which it is his duty to defend ; or
- (b) in presence of an enemy, shamefully casts away his arms or ammunition, or intentionally uses words or any other means to induce any person subject to military law to abstain from acting against the enemy, or to discourage such person from acting against the enemy, or misbehaves in such manner as to show cowardice ; or
- (c) directly or indirectly holds correspondence with, or communicates intelligence to, the enemy, or any person in arms against the State, or who, coming to the knowledge of any such correspondence or communication, omits to discover it immediately to his commanding or other superior officer ; or
- (d) treacherously makes known the watchword to any person not entitled to receive it ; or

- (e) directly or indirectly assists or relieves with money, victuals or ammunition, or knowingly harbours or protects, any enemy or person in arms against the State ; or
- (f) in time of war, or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports calculated to create alarm or despondency ; or
- (g) being a sentry in time of war or alarm, or over any State prisoner, treasure, magazine or dockyard, sleeps upon his post, or quits it without being regularly relieved or without leave ; or
- (h) in time of action, leaves his commanding officer or his post or party, to go in search of plunder ; or
- (i) in time of war, quits his guard, picquet, party or patrol without being regularly relieved or without leave ; or
- (j) in time of war or during any military operation, uses criminal force to, or commits an assault on, any person bringing provisions or other necessaries to the camp or quarters of any of His Majesty's forces, or forces a safeguard, or breaks into any house or any other place for plunder, or plunders, injures or destroys any field, garden or other property of any kind ;
- [1] (k) on active service commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving ;

shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

Offences not punishable with death.

26. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) strikes, or forces or attempts to force, any sentry ; or
- (b) in time of peace, intentionally occasions a false alarm in camp, garrison or cantonment ; or
- (c) being a sentry, or on guard, plunders or wilfully destroys or injures any property placed under his charge or under charge of his guard ; or
- (d) being a sentry, in time of peace, sleeps upon his post, or quits it without being regularly relieved or without leave ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Mutiny and Insubordination.

Offences punishable with death.

27. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) begins, excites, causes [2] or conspires with any other persons to cause [2] or joins in any mutiny ; or
- (b) being present at any mutiny, does not use his utmost endeavours to suppress the same ; or

Leg. Changes:—[1] This clause was added by S. 8, Act XI of 1918. [2] This expression was added by S. 9 of Act XI of 1918.

- (c) knowing or having reason to believe in the existence of any mutiny, or of any intention to mutiny, or of any conspiracy against the State, does not, without delay, give information thereof to his commanding or other superior officer ; or
- (d) uses or attempts to use criminal force to, or commits an assault on, his superior officer, whether on or off duty, knowing or having reason to believe him to be such ; or
- (e) disobeys the lawful command of his superior officer :

shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

Offences not punishable with death.

28. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) is grossly insubordinate or insolent to his superior officer in the execution of his office ; or
- (b) refuses to superintend or assist in the making of any field-work or other military work of any description ordered to be made either in quarters or in the field : or
- (c) impedes a provost-marshal or an assistant provost-marshal, or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of a provost-marshal, or, when called on, refuses to assist, in the execution of his duty, the provost-marshal, assistant provost-marshal, or any such officer, non-commissioned officer or other person ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Desertion, Fraudulent Enrolment and Absence without Leave.

29. Any person subject to this Act who deserts, or attempts to desert, the service shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

Desertion.

Harbouring deserter, absence without leave, etc.

30. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) knowingly harbours any deserter, or who, knowing, or having reason to believe, that any other person has deserted, or that any deserter has been harboured by any other person, does not without delay give information thereof to his own or some other superior officer, or use his utmost endeavours to cause such deserter to be apprehended ; or
- (b) knowing, or having reason to believe, that a person is a deserter, procures or attempts to procure the enrolment of such person ; or
- (c) without having first obtained a regular discharge from the corps or department to which he belongs, enrolls himself in the same or any other corps or department ; or
- (d) absents himself without leave, or without sufficient cause overstays leave granted to him ; or

- (e) being on leave of absence and having received information from proper authority that any corps or portion of a corps, or any department, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay ;
or
- (f) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty ; or
- (g) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer quits the parade or line of march ; or
- (h) in time of peace, quits his guard, picquet or patrol without being regularly relieved or without leave ; or
- (i) without proper authority is found two miles or upwards from camp ; or
- (j) without proper authority is absent from his cantonment or lines after tattoo, or from camp after retreat-beating ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Disgraceful Conduct.

Disgraceful conduct.

31. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) dishonestly misappropriates or converts to his own use any money, provisions, forage, arms, clothing, ammunition, tools, instruments, equipments or military stores of any kind, the property of Government, entrusted to him ; or
- (b) dishonestly receives or retains any property in respect of which an offence under clause (a) has been committed, knowing or having reason to believe the same to have been dishonestly misappropriated or converted ; or
- (c) wilfully destroys or injures any property of Government entrusted to him ; or
- (d) commits theft in respect of any property of Government, or of any military mess, band or institution, or of any person subject to military law, or serving with, or attached to, the army .
or
- (e) dishonestly receives or retains any such property as is specified in clause (d) knowing or having reason to believe it to be stolen ; or
- (f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person ; or
- (g) malingers or feigns or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity ; or
- (h) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person ; or
- (i) commits any offence of a cruel, indecent or unnatural kind, or attempts to commit any such offence and does any act towards its commission ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Intoxication.

32. Any person subject to this Act who is in a state of intoxication, whether on duty or not on duty, shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Offences in relation to Persons in Custody.

33. Any person subject to this Act who, without proper authority, releases any State prisoner, enemy or person taken in arms against the State, placed under his charge, or who negligently suffers any such prisoner, enemy or person to escape, shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

34. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) being in command of a guard, picquet or patrol, refuses to receive any prisoner or person duly committed to his charge ; or
- (b) without proper authority releases any prisoner or person placed under his charge, or negligently suffers any such prisoner or person to escape ; or
- (c) being in military custody, leaves such custody before he is set at liberty by proper authority ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Offences in relation to Property.

35. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) commits extortion, or without proper authority exacts from any person carriage, portage or provisions ; or
- (b) in time of peace, commits house-breaking for the purpose of plundering, or plunders, destroys or damages any field, garden or other property ; or
- (c) designedly or through neglect kills, injures, makes away with, ill-treats or loses his horse or any animal used in the public service ; or
- (d) makes away with, or is concerned in making away with, his arms, ammunition, equipments, instruments, tools, clothing or regimental necessities ; or
- (e) loses by neglect anything mentioned in clause (d) ; or
- (f) wilfully injures anything mentioned in clause (d) or any property belonging to Government, or to any military mess, band or institution, or to any person subject to military law, or serving with, or attached to the army ; or
- (g) sells, pawns, destroys or defaces any medal or decoration granted to him ;

shall, on conviction by court martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Offences in relation to False Documents and Statements.

False accusations
and offences in rela-
tion to documents.

36. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) makes a false accusation against any person subject to military law, knowing such accusation to be false; or
- (b) in making any complaint under section 117, knowingly makes any false statement affecting the character of any person subject to military law, or knowingly and wilfully suppresses any material fact; or
- (c) obtains or attempts to obtain for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement; or
- (d) knowingly furnishes a false return or report of the number or state of any men under his command or charge, or of any money, arms, ammunition, clothing, equipments, stores or other property in his charge, whether belonging to such men or to Government or to any person in or attached to the army, or who, through design or culpable neglect, omits or refuses to make or send any return or report of the matters aforesaid;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

37. Any person having become subject to this Act who is discovered

False answers on
enrolment.

to have made a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled, shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Offences in relation to Courts-martial.

Offences in relation
to courts-martial.

38. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) when duly summoned to attend as a witness before a court-martial, intentionally omits to attend, or refuses to be sworn or affirmed or to answer any question, or to produce or deliver up any book, document or other thing which he may have been duly warned and called upon to produce or deliver up; or
- (b) intentionally offers any insult, or causes any interruption or disturbance to, or uses any menacing or disrespectful word, sign or gesture, or is insubordinate or violent in the presence of, a court-martial while sitting; or

- (c) having been duly sworn or affirmed before any court-martial or other military court competent to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Miscellaneous Military Offences.

Miscellaneous military offences.

39. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) being an officer or warrant officer, behaves in a manner unbecoming his position and character; or
- (b) strikes or otherwise ill-treats any person subject to this Act being his subordinate in rank or position; or
- (c) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority; or
- (d) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person; or
- (e) attempts to commit suicide and does any act towards the commission of such offence; or
- (f) being below the rank of warrant officer, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from, any town or bazar, carrying a sword, bludgeon or other offensive weapon; or
- (g) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service; or
- (h) neglects to obey any general or garrison or other orders; or
- (i) is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

[1] 39-A. Whoever attempts to commit an offence punishable by this Act, or to cause such an offence to be committed,

Attempts.

and in such attempt does any act towards the commission of the offence may, where no express provision

is made by this Act for the punishment of such attempt, be punished with the punishment provided in this Act for such offence.

Leg. Changes:—[1] S. 39-A was added by S. 10 of Act XI of 1918.

*Abetment.***Abetment.**

40. Every person subject to this Act who abets any offence punishable under this Act may be punished with the punishment provided in this Act for such offence.

Civil Offences.

41. Every person subject to this Act who at any place beyond British India, or when on active service in British India, commits any civil offence shall be deemed to be guilty of an offence against military law, and, if charged therewith under this section, shall, subject to the provisions of this Act, be liable to be tried for the same by court-martial, and on conviction to be punished as follows, that is to say :—

- (a) if the offence is one which would be punishable under the law of British India with death or with transportation, he shall be liable to suffer any punishment assigned for the offence by the law of British India ; and
- (b) in other cases, he shall be liable to suffer any punishment assigned for the offence by the law of British India, or such punishment as might be awarded to him in pursuance of this Act in respect of an act prejudicial to good order and military discipline.

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Certain civil offences triable by military law.

42. Every person subject to this Act who commits, or attempts to commit, or abets the commission of, an offence punishable under Chapter VI of the Indian Penal Code, or any of the following offences against any person subject to military law, that is to say, murder, culpable homicide or any offence punishable under any of the sections 323 to 335 (both inclusive), or section 506 of the said Code, shall be deemed to be guilty of an offence against military law, and, if charged under this section with any such offence, shall, subject to the provisions of this Act, be liable to be tried by court-martial, and on conviction shall be liable to suffer any punishment assigned for the offence by the said Code.

CHAPTER VI.

PUNISHMENTS.

43. Punishments may be inflicted in respect of offences committed by persons subject to this Act, and convicted by court-martial, according to the scale following, that is to say :—

- (a) death ;
- (b) transportation for life or for any period not less than seven years ;
- (c) imprisonment [1] either rigorous or simple [1] for any term not exceeding fourteen years ;

Leg. Changes :—[1] The words "either rigorous or simple" were substituted for the words "(with or without solitary confinement)" by S. 11 of Act XI of 1918.

- (d) "dismissal from the service ;
- (e) in the case of officers and warrant officers, suspension from rank, pay and allowances for [1] a period not exceeding two months [1] ;
- (f) reduction, in the case of a warrant officer, to a lower grade or class (if any) of warrant officer, or in the case of a non-commissioned officer, to a lower grade or to the ranks ;
- (g) in the case of officers, warrant officers and non-commissioned officers, forfeiture of seniority of rank ;
- [2] (gg) in the case of officers, reprimand or severe reprimand ;
- (h) forfeitures and stoppages as follows, namely :—
- (i) forfeiture of service for the purpose of promotion, increased pay, pension or any other prescribed purpose ;
 - (ii) forfeiture of any military decoration or military reward ;
 - (iii) forfeiture, in the case of a person sentenced to dismissal from the service [3] * * * *
of all arrears of pay and allowances and other public money due to him at the time of such dismissal ;
 - (iv) stoppages of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good ;
- [4] (v) on active service forfeiture of pay and allowances for a period not exceeding three months.

44. Where in respect of any offence under this Act there is specified a particular punishment or such less punishment as is in this Act mentioned, there may be awarded in respect of that offence, instead of such particular punishment (but subject to the other provisions of this Act as to punishments, and regard being had to the nature and degree of the offence) any one punishment lower in the above scale than the particular punishment.

Corporal punishment. 45. Where any person subject to this Act and under the rank of warrant officer—

- (a) on active service is guilty of any offence ; or
- (b) at any time is guilty of the offence specified in clause (d) of section 31 ; or
- (c) at any time is guilty of a civil offence which would be punishable with whipping under the law of British India, and is triable by court-martial under this Act,

it shall be lawful for a court-martial to award for that offence corporal punishment (a) not exceeding thirty lashes.

Leg. Changes:—[1] These words were substituted for 'any stated period' by S. 11 of Act XI of 1918. [2] Clause (gg) was added by S. 11 of Act XI of 1918. [3] The words "or whose sentence involves such dismissal" were repealed by Act XI of 1918. [4] Clause (v) was added by S. 11 of Act XI of 1918.

Case-law:—(a) As to the power of inflicting summary flogging on enlisted store-lascars, see 11 P.R. 1868, Cr.

Position of corporal punishment in scale. 46. Corporal punishment shall, for the purpose of commutation, be deemed to stand in the scale of punishments next below dismissal.

Combination of punishments. 47. A sentence of a court-martial may award, in addition to or without any one other punishment, any one or more of the punishments specified in clauses (d), (f), (gg) [1] and (h) of section 43.

Solitary confinement. 48. Whenever any person is sentenced to rigorous imprisonment, the court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say,—

- (a) a time not exceeding one month if the term of imprisonment does not exceed six months;
- (b) a time not exceeding two months if the term of imprisonment exceeds six months and does not exceed one year;
- (c) a time not exceeding three months if the term of imprisonment exceeds one year.

Reduction of non-commissioned officers to rank. 49. A non-commissioned officer sentenced by court-martial to transportation, imprisonment, corporal punishment or dismissal from the service, shall be deemed to be reduced to the ranks.

Retention in the ranks of a person convicted on active service. [2] 49-A. When any person on active service has been sentenced by court-martial to dismissal or to transportation or imprisonment, whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve in the ranks, and where such person has been sentenced to transportation or imprisonment, such service shall be reckoned as part of his transportation or imprisonment.

CHAPTER VII.

PENAL DEDUCTIONS.

Deductions from pay and allowances. 50. The following penal deductions may be made from the pay and allowances of a person subject to this Act, that is to say,—

- (a) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of imprisonment awarded by a criminal court, a court-martial or an officer exercising authority under section 20;
- (b) all pay and allowances for every day whilst he is in custody on a charge for an offence of which he is afterwards convicted by a criminal court or court-martial, or on a charge of absence without leave for which he is afterwards awarded imprisonment by an officer exercising authority under section 20;

Leg. Changes:—[1] '(gg)' was inserted by Act XI of 1918. [2] S. 49-A was added by S. 13 of Act XI of 1918.

- (c) all pay and allowances for every day on which he is in hospital on account of sickness certified by the [1] * medical officer attending on him [1] * * * to have been caused by an offence under this Act committed by him ;
- [2] (cc) for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by his own misconduct or imprudences, such sum as may be specified by order of the Commander-in-Chief in India ;
- (d) all pay and allowances ordered by a court-martial to be suspended or forfeited under section 43 ;
- (e) any sum ordered by a court-martial to be stopped under section 43 ;
- (f) any sum required to make good such compensation for any expenses caused by him, or for any loss of, or damage or destruction done by him to, any arms, ammunition, equipment, clothing, instruments, regimental necessaries or military decoration, or to any buildings or property, as may be awarded by his commanding officer ;
- (g) any sum required to pay a fine awarded by a criminal court, a court-martial exercising jurisdiction under section 41 or section 42, or an officer exercising authority under section 20 or section 21 :

Provided that the total deductions from the pay and allowances of a person subject to this Act made under clauses (e) to (g), both inclusive, shall not (except in the case of a person sentenced to dismissal [3] * * *), exceed in any one month one-half of his pay and allowances for that month.

Explanation.—For the purposes of clauses (a) and (b)—

- (i) absence or custody for six consecutive hours or upwards, whether wholly in one day or partly in one day and partly in another, may be reckoned as absence or custody for a day ;
- (ii) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody ; and
- (iii) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person.

Deductions from public money other than pay.	51. Any sum authorized by this Act to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same, be deducted from any public money due to him other than a pension.
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Leg. Changes.—[1] The words “proper” and “at the hospital” respectively were repealed by Act XI of 1918. [2] Sub-clause (cc) was added by S. 14 of Act XI of 1918. [3] The words “or whose sentence involves dismissal” were repealed by Act XI of 1918.

52. Any deduction from pay and allowances authorized by this Act may be remitted in such manner [1] and to such extent [4] and by such authority as may from time to time be prescribed.

[2] 52-A. (1) In the case of all persons subject to this Act, being prisoners of war, whose pay and allowances have been forfeited under section 50, but in respect of whom a remission has been made under section 52, it shall be lawful, notwithstanding any provision in any enactment or any rule of law to the contrary, for proper provision to be made by the prescribed authorities out of such pay and allowances for any dependants of such persons, and any such remission shall in that case be deemed to apply only to the balance thereafter remaining of such pay and allowances.

(2) Any payments hitherto made to dependants by way of deductions from pay and allowances which, if this section had been in force, could have been validly made are hereby validated.

CHAPTER VIII.

COURTS-MARTIAL.

Constitution and Dissolution of Courts-martial.

53. For the purposes of this Act there shall be four kinds of courts-martial, that is to say:—

- (1) general courts-martial;
- (2) district courts-martial;
- (3) summary general courts-martial; and
- (4) summary courts-martial.

54. A general court-martial may be convened by the Commander-in-Chief in India, or by any officer empowered in this behalf by warrant of the Commander-in-Chief in India.

55. A district court-martial may be convened by any officer having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such officer.

56. A warrant issued under section 54 or section 55 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

57. A general court-martial shall consist of not less than seven officers unless that number, due regard being had to the public service, is not available, in which case the court may consist of not less than five officers.

58. A district court-martial shall consist of not less than three officers.

Leg. Changes:—[1] These words were inserted by Act X of 1917. [2] S. 52-A was inserted by Act X of 1917.

59. Whenever a general court-martial is ordered to be composed of the smaller number of officers specified in section 57, the order convening the court shall state that the larger number of officers is not, due regard being had to the public service, available, and such statement shall be conclusive evidence of the fact so stated.

Convening order to state if larger number of officers is not available.

60. The officers composing a general or district court-martial shall, at the discretion of the convening officer, but subject to the provisions of section 61, either be British or Indian officers, but shall not be partly British and partly Indian officers.

Composition of general or district courts-martial.

Claim to trial by British officers.

61. (1) Any person subject to this Act who is under orders for trial by general or district court-martial may claim to be tried by British officers.

(2) In all cases the right of making such a claim shall, before the court is convened, be explained to the person under orders for trial by the commanding officer, or some officer deputed by him in this behalf, and, when such a claim is made, the court shall be constituted accordingly.

Convening of summary general courts-martial.

62. The following authorities shall have power to convene a summary general court-martial, namely :—

- (a) an officer empowered in this behalf by an order of the Governor General in Council or of the Commander-in-Chief in India ;
- (b) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf ;
- (c) an officer commanding any detached portion of His Majesty's troops upon active service, when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by an ordinary general court-martial.

Composition of summary general courts-martial.

63. A summary general court-martial shall consist of not less than three officers.

Summary courts-martial.

64. (1) A summary court-martial may be held—

- (a) by the commanding officer of any corps or department of His Majesty's Indian forces, or of any detachment of those forces ;
- (b) by the commanding officer of any British corps or detachment to which details subject to this Act are attached.

(2) At every summary court-martial the officer holding the trial shall alone constitute the court, but the proceedings shall be attended throughout by two other officers who shall not, as such, be sworn or affirmed.

Dissolution of courts.

65. (1) If a court-martial after the commencement of a trial is reduced below the smallest number of officers of which it is by this Act required to consist, it shall be dissolved :

Provided that a general court-martial shall not be dissolved under the provisions of this sub-section unless it is reduced below five officers.

(2) If, on account of the illness of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(3) Where a court-martial is dissolved under this section, the accused may be tried again.

Jurisdiction of Courts-martial.

66. When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been summarily dealt with for an offence under section 20 or section 22, he shall not be liable to be tried again for the same offence by a court-martial or dealt with summarily in respect of it under either of the said sections.

Prohibition of second trial.

67. No person subject to this Act shall be tried or punished by a court-martial for any offence after the expiration of three years from the date of such offence, unless the offender, by reason of absence or of some other manifest impediment, could not be arrested or confined and brought to trial within that period; in which case he shall be liable to be tried at any time not exceeding two years after such impediment has ceased.

Limitation of trial.

68. Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever.

Place of trial.

Adjustment of the jurisdiction of Courts-martial and Criminal Courts.

69. When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the prescribed military authority to decide before which court the proceedings shall be instituted, and, if that authority decides that they shall be instituted before a court-martial, to direct that the accused person shall be detained in military custody.

Order in case of concurrent jurisdiction.

70. (1) When a criminal court having jurisdiction is of opinion that proceedings ought to be instituted before itself in respect of any alleged offence, it may, by written notice, require the prescribed military authority at its option either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Governor General in Council.

Power of criminal court to require delivery of offender.

(2) In every such case the said authority shall either deliver over the offender in compliance with the requisition or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Governor General in Council, whose order upon such reference shall be final.

71. (1) Notwithstanding anything contained in section 26 of the General Clauses Act, 1897, or in section 403 of the X of 1897 Code of Criminal Procedure, 1898, a person convicted V of 1898 or acquitted by a court-martial may be afterwards tried by a criminal court for the same offence or on the same facts.

(2) If a person sentenced by a court-martial in pursuance of this Act to punishment for an offence is afterwards tried by a criminal court for the same offence or on the same facts, that court shall, in awarding punishment, have regard to the military punishment he may already have undergone.

Powers of Courts-martial.

Powers of general and summary general courts-martial.

72. A general or summary general court-martial shall have power to try any person subject to this Act for any offence made punishable therein, and to pass any sentence authorized by this Act.

Powers of district court-martial.

73. A district court-martial shall have power to try any person subject to this Act other than an officer, for any offence made punishable therein, and to pass any sentence authorized by this Act other than a sentence of death, or transportation, or imprisonment for a term exceeding two years.

Offences triable by summary court-martial.

74. A summary court-martial may try any offence punishable under any of the provisions of this Act:

Provided that when there is no grave reason for immediate action, and reference can without detriment to discipline be made to the officer empowered to convene a district court-martial [4] or on active service a summary general court-martial [1] for the trial of the alleged offender, an officer holding a summary court-martial shall not try without such reference any of the following offences, namely:—

(a) any offence punishable under sections 25, 27, clauses (a), (b) or (c), 33, 41 or 42, or

(b) any offence against the officer² holding the court.

Persons triable by summary court-martial.

75. A summary court-martial may try any person subject to this Act and under the command of the officer holding the court, except an officer or warrant officer.

76. (1) A summary court-martial * * * * * [2] may pass any sentence which can be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding one year.

[3] (2) * * * * *

Leg. Changes:—[1] These words were inserted by S. 15 of Act XI of 1918. [2] The words "held by the commanding officer of a corps or department" were repealed by Act X of 1917. [3] Sub-section (2) was repealed by Act X of 1917.

Procedure at Trials by Court-martial.

President.

77. At every general, district or summary general court-martial, the senior member shall sit as president.

Judge Advocate.

78. Every general court-martial shall, and every district court-martial may, be attended by a judge advocate, who shall be either an officer belonging to the department of the Judge Advocate General in India, or, if no such officer is available, a person appointed by the convening officer.

Superintending officer.

79. A British officer of not less than four years' service, hereinafter called the superintending officer, shall be appointed to superintend the proceedings of every court-martial composed of Indian officers which is not attended by a judge advocate.

Challenges.

80. (1) At all trials by general, district or summary general courts-martial, as soon as the court is assembled, the names of the president and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the court.

(2) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the court shall, in the absence of the challenged officer, decide on the objection.

(3) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(4) When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

Voting of members.

81. (1) Every decision of a court-martial shall be passed by an absolute majority of votes; and where there is an equality of votes, as to either finding or sentence, the decision shall be in favour of the accused.

(2) In matters other than a challenge or the finding or sentence, the president shall have a casting vote.

Oaths of president and members.

82. An oath or affirmation in the prescribed form shall be administered to every member of every court-martial and to the judge advocate or superintending officer before the commencement of the trial.

Oaths of witnesses.

83. Every person giving evidence at a court-martial shall be examined on oath or affirmation, and shall be duly sworn or affirmed in the prescribed form.

84. (1) The convening officer, the president of the court, the judge advocate, or the commanding officer of the accused person, may, by summons under his hand, require the attendance before the court, at a time and place to be mentioned in the summons, of any person, either to give evidence or to produce any document or other thing.

Summoning witnesses and production of documents.

(2) In the case of a witness amenable to military authority, the summons shall be sent to the officer commanding the corps, department or detachment to which he belongs, and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate.

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with convenient certainty.

(5) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to any letter, postcard, telegram or other document in the custody of the postal or telegraph authorities, 1 of 1872

(6) If any document in such custody is, in the opinion of any district magistrate, chief presidency magistrate, high court or court of session, wanted for the purpose of any court-martial, such magistrate or court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate or court may direct.

(7) If any such document is, in the opinion of any other magistrate or of any commissioner of police or district superintendent of police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause search to be made for and to detain such document pending the orders of any such district magistrate, chief presidency magistrate or court.

85. (1) Whenever, in the course of a trial by court-martial, it appears to the court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such court may address the Judge Advocate General in order that a commission to take the evidence of such witness may be issued.

Commissions.

(2) The Judge Advocate General may then, if he thinks necessary, issue a commission to any district magistrate or magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(3) When the witness resides in the territories of any prince or chief in India in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

V of 1898.

(4) The magistrate or officer to whom the commission is issued, or, if he is the district magistrate, he or such magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is, or shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under the Code of Criminal Procedure, 1898.

(5) Where the commission is issued to such officer as is mentioned in sub-section (3), he may delegate his powers and duties under the commission to any officer subordinate to him whose powers are not less than those of a magistrate of the first class in British India.

(6) When the witness resides out of India, the commission may be issued to any British consular officer, British magistrate or other British official competent to administer an oath or affirmation in the place where such witness resides.

(7) The prosecutor and the accused person in any case in which a commission is issued may respectively forward any interrogatories in writing which the court may think relevant to the issue, and the magistrate or officer to whom the commission is issued shall examine the witness upon such interrogatories.

(8) The prosecutor and the accused person may appear before such magistrate or officer by pleader or, except in the case of an accused person in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

(9) After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Judge Advocate General.

(10) On receipt of a commission and deposition returned under sub-section (9), the Judge Advocate General shall forward the same to the court at whose instance the commission was issued or, if such court has been dissolved, to any other court convened for the trial of the accused person; and the commission, the return thereto and the deposition shall be open to the inspection of the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the court.

(11) In every case in which a commission is issued under this section, the trial may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Explanation.—In this section, the expression " Judge Advocate General " means the Judge Advocate General in India, and includes a Deputy Judge Advocate General.

86. (1) A person charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A person charged before a court-martial with attempting to desert may be found guilty of desertion or of being absent without leave.

(3) A person charged before a court-martial with any of the following offences specified in section 31, that is to say, theft, dishonest misappropriation or conversion to his own use of property entrusted to him, or dishonestly receiving or retaining property in respect of which any of the aforesaid offences has been committed, knowing or having reason to believe it to have been stolen or dishonestly misappropriated or converted, may be found guilty of any other of these offences with which he might have been charged.

(4) A person charged before a court-martial with an offence punishable under section 41 or section 42 may be found guilty of any other offence of which he might have been found guilty if the provisions of the Code of Criminal Procedure, 1898, were applicable.

V of 1898.

(5) A person charged before a court-martial with any other offence under this Act may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment.

[1] (6) A person charged before a court-martial with any offence under this Act may be found guilty of having attempted to commit or of abetment of that offence although the attempt or abetment is not separately charged.

Majority requisite to sentence of death.

87. No sentence of death shall be passed by any court-martial without the concurrence of two-thirds at the least of the members of the court.

Evidence before Courts-martial.

General rule as to evidence.

88. The Indian Evidence Act, 1872, shall, subject to the provisions of this Act, apply to all proceedings before a court-martial.

Judicial notice.

89. A court-martial may take judicial notice of any matter within the general military knowledge of the members.

90. In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the civil or military service of the Government shall, on production, be presumed to have been duly signed by the person and in the character by whom and in which it purports to have been signed, until the contrary is shown.

Presumption as to signatures.

91. Any enrolment paper purporting to be signed by an enrolling officer shall, in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given. [2]. The enrolment of such person may be proved by the production of a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper. [2]

Enrolment paper.

Leg. Changes :—[1] Sub-section (6) was added by S. 16 of Act XI of 1918. [2] The sentence "The enrolment.....enrolment paper" was inserted by S. 17 of Act XI of 1918.

[1] 91-A. (1) A letter, return or other document respecting the service of any person in, or the dismissal or discharge of any person from, any portion of His Majesty's Forces, or respecting the circumstance of any person not having served in, or belonged to, any portion of His Majesty's Forces, if purporting to be signed by or on behalf of the Governor General in Council or the Commander-in-Chief in India or by any prescribed officer, shall be evidence of the facts stated in such letter, return or other document.

(2) An Army List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers or warrant officers therein mentioned, and of any appointment held by such officers or warrant officers and of the corps, battalion or arm or branch of the service to which such officers or warrant officers belong.

(3) Where a record is made in any regimental book, in pursuance of this Act or of any rules made thereunder or otherwise in pursuance of military duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts thereby stated.

(4) A copy of any record in any regimental book purporting to be certified to be a true copy by the officer having the custody of such book shall be evidence of such record.

(5) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by, a provost-marshal, assistant provost-marshal or other officer, or any portion of His Majesty's Forces, a certificate purporting to be signed by such provost-marshal, assistant provost-marshal or other officer, or by the commanding officer of that portion of His Majesty's Forces and stating the fact, date and place of such surrender or apprehension, shall be evidence of the matters so stated.

(6) When any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by, a police-officer not below the rank of an officer in charge of a police-station, a certificate purporting to be signed by such police-officer and stating the fact, date and place of such surrender or apprehension, shall be evidence of the matters so stated.

92. (1) If at any trial for desertion, absence without leave, overstaying leave or not rejoining when warned for service, the person tried states in his defence any sufficient or reasonable excuse for his unauthorized absence, and refers in support thereof to any officer in the civil or military service of Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the court shall address such officer and adjourn until his reply is received.

Reference by
accused to Govern-
ment officer.

(2) The written reply of any officer so referred to shall, if signed by him, be received in evidence and have the same effect as if made on oath before the court.

(3) If the court is dissolved before the receipt of such reply, or if the court omits to comply with the provisions of this section, the convening officer may, at his discretion, annul the proceedings and order a fresh trial by the same or another court-martial.

93. (1) When any person subject to this Act has been convicted by a court-martial of any offence, such court-martial may inquire into, and receive and record evidence of, any previous convictions of such person, either by a court-martial or by a criminal court, and may further inquire into and record the general character of such person, and such other matters as may be prescribed.

Evidence of previous convictions and general character.

(2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, court-martial books or other official records; and it shall not be necessary [1] to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

(3) At a summary court-martial the officer holding the trial may, if he thinks fit, record any previous convictions against the offender, his general character, and such other matters as may be prescribed, as of his own knowledge, instead of requiring them to be proved under the foregoing provisions of this section.

Confirmation and Revision of Findings and Sentences.

Finding and sentence invalid without confirmation.

94. No finding or sentence of a general or district court-martial shall be valid except so far as it may be confirmed as provided by this Act.

Power to confirm finding and sentence of general court-martial.

95. The findings and sentences of general courts-martial may be confirmed by the Commander-in-Chief in India, or by any officer empowered in this behalf by warrant of the Commander-in-Chief in India.

Power to confirm finding and sentence of district court-martial.

96. The findings and sentences of district courts-martial may be confirmed by any officer having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such officer.

Contents of warrant issued under section 95 or section 96.

97. A warrant issued under section 95 or section 96 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

98. (1) The finding and sentence of a summary general court-martial shall require to be confirmed by the convening officer [2] or if the convening officer so directs, by an authority superior to the convening officer. [2]

Confirmation of finding and sentence.

Leg. Changes :—[1] The words "to prove the signature to such certified extracts, nor shall it be necessary" were repealed by Act XI of 1918. [2] These words were inserted by S. 19 of Act XI of 1918.

- (a) in the case of the trial of an officer,
- (b) in the case of an acquittal or a sentence of death or transportation or imprisonment for a term exceeding two years, and
- (c) in any other case if so ordered by the [1] convening officer.

(2) Save as provided in sub-section (1), a sentence passed by a summary general court-martial shall not require to be confirmed, but may be carried out forthwith.

99. Subject to such restrictions as may be contained in any warrant issued under section 95 or section 96, a confirming officer may, when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any less punishment or punishments to which the offender might have been sentenced by the court-martial:

Power of confirming officer to mitigate, remit or commute sentences.

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court.

[2] 99-A. When any person subject to this Act is tried and sentenced by court-martial while on board ship, the finding and sentence so far as not confirmed and executed on board ship may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

Confirmation of finding and sentence on board ship.

100. (1) Any finding or sentence of a court-martial which requires confirmation may be once revised by order of the confirming officer; and on such revision, the court, if so directed by him, may take additional evidence.

Revision of finding or sentence.

(2) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided that, if a general court-martial, it still consists of five officers, or if a district court-martial, of three officers.

Finding and sentence of a summary court-martial.

101. The finding and sentence of a summary court-martial shall not require to be confirmed, but may be carried out forthwith:

Provided that, if the officer holding the trial is of less than five years' service, he shall not, except on active service, carry into effect any sentence until it has received the approval of an officer commanding not less than a corps.

Leg. Changes:—[1] The word "convening" was substituted for the word "said" by S. 19 of Act XI of 1918. [2] S. 99-A was added by S. 20 of Act XI of 1918.

102. The proceedings of every summary court-martial shall without delay be forwarded to the officer commanding the division or brigade within which the trial was held, or to the prescribed officer; and such officer, or the Commander-in-Chief in India, or the officer commanding the army [1] or army corps, in which the trial was held, may, for reasons based on the merits of the case, but not on any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the court might have passed.

Transmission of
proceedings of sum-
mary courts-
martial

103. Where a sentence passed by a court-martial which has been confirmed, or which does not require confirmation, is found for any reason to be invalid, the authority who would have had power under section 112 to commute the punishment awarded by the sentence if it had been valid may pass a valid sentence :

Substitution of
valid for invalid
sentence.

Provided that the punishment awarded by the sentence so passed shall not be higher in the scale of punishments than, or in excess of, the punishment awarded by the invalid sentence.

CHAPTER IX.

EXECUTION OF SENTENCES.

104. In awarding a sentence of death a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead, or shall suffer death by being shot to death.

Form of sentence
of death.

Imprisonment to
be in military cus-
tody.

105. Whenever any person is sentenced under this Act to simple imprisonment, such sentence shall be carried out by confinement in military custody.

106. Whenever any person is sentenced under this Act to transportation or imprisonment, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the president or, in the case of a summary court-martial, by the court.

Commencement
of sentence of trans-
portation or impri-
sonment.

107. Whenever any sentence of transportation or rigorous imprisonment is passed under this Act, or whenever any sentence so passed is commuted to transportation or to rigorous imprisonment, the commanding officer of the person under sentence, or such other officer as may be prescribed, shall forward a warrant in the prescribed form to the officer in charge of the civil prison in which such person is to be confined, and shall forward him to such prison with the warrant :

Execution of sen-
tence of transporta-
tion or imprison-
ment.

Provided that, in the case of a sentence of rigorous imprisonment for a period not exceeding three months, the confirming officer, or, in the case of a sentence which does not require confirmation, the court may direct that the sentence shall be carried out by confinement in military custody.

Leg. Changes:—[1] The words "or army corps" were inserted by Act XI of 1918.

[1] Provided further that on active service a sentence of rigorous imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may, from time to time, appoint.

108. Whenever, in the opinion of an officer commanding an army, ^[2] army corps, division or independent brigade, any sentence or portion of a sentence of imprisonment cannot, for special reasons, conveniently be carried out in accordance with the provisions of section 105 or section 107, such officer may direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place.

Execution of sentence of imprisonment in special cases.

[3] 108-A. In every case in which a sentence of transportation is passed under this Act, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be deemed to have been undergoing his sentence of transportation during the term of his imprisonment.

Offenders sentenced to transportation how dealt with until transported.

109. Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil prison, a warrant in accordance with such order shall be forwarded by the prescribed officer to the officer in charge of the prison in which such person is confined.

Communication of certain orders to civil prison officers.

110. In executing a sentence of solitary confinement such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods, and, when the imprisonment awarded exceeds three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Limit of solitary confinement.

111. Whenever any person is sentenced under this Act by a court-martial to corporal punishment, such punishment shall be inflicted on the bare back with the regulation cat.

Instrument of corporal punishment.

[4] 111-A. When a sentence of fine is imposed by a court-martial under section 41 or section 42, whether the trial was held within British India or not, a copy of such sentence, signed and certified by the president of the court or the officer holding the trial, as the case may be, may be sent to any magistrate in British India, and such magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898, for the levy of fines as if it was a sentence of fine imposed by such magistrate.

Execution of sentence of fine.

V of 1898.

Leg. Changes:—[1] This proviso was added by S. 21 of Act XI of 1918. [2] The words 'army corps' were inserted by Act XI of 1918. [3] S. 108-A was added by S. 22 of Act XI of 1918. [4] S. 111-A was added by S. 23 of Act XI of 1918.

CHAPTER X.

PARDONS AND REMISSIONS.

[1] 112. (1) When any person subject to this Act has been convicted by a court-martial of any offence, the Governor General in Council or the Commander-in-Chief in India or, in the case of a sentence which he could have confirmed or which did not require confirmation, the officer commanding the army, army corps, division or independent brigade in which such person at the time of his conviction was serving, or the prescribed officer may,

- (a) either without conditions or upon any conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded ;
- (b) mitigate the punishment awarded, or commute such punishment for any less punishment or punishments mentioned in this Act :

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court.

(2) If any condition on which a person has been pardoned or a punishment has been remitted is, in the opinion of the authority which granted the pardon or remitted the punishment, not fulfilled, such authority may cancel the pardon or remission, and thereupon the sentence of the court shall be carried into effect as if such pardon had not been granted or such punishment had not been remitted :

Provided that, in the case of a person sentenced to transportation or imprisonment, such person shall undergo only the unexpired portion of his sentence.

(3) When under the provisions of section 49 a non-commissioned officer is deemed to be reduced to the ranks, such reduction shall, for the purposes of this section, be treated as a punishment awarded by sentence of a court-martial.

CHAPTER XI.

RULES.

113. (1) The Governor General in Council may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the discharge from the service of persons subject to this Act ;
- (b) the amount and incidence of fines to be imposed under section 21 ;
- (c) the assembly and procedure of courts of inquiry, and the administration of oaths or affirmations by such courts ;

Leg Changes:—[1] This S. 112 was substituted by Act XI of 1918 for the section 112 already substituted by Act X of 1917 for the original section.

- (d) the convening and constituting of courts-martial ;
- (e) the adjournment, dissolution and sittings of courts-martial ;
- (f) the procedure to be observed in trials by courts-martial ;
- (g) the confirmation and revision of the findings and sentences of courts-martial ;
- (h) the carrying into effect sentences of courts-martial ;
- (i) the forms of orders to be made under the provisions of this Act relating to courts-martial, transportation or imprisonment ;
- [1](ii) the constitution of authorities to decide for what persons, to what amounts and in what manner, provision should be made for dependants under section 52-A, and the due carrying out of such decisions ; and
- (j) any matter in this Act directed to be prescribed.

(3) All rules made under this Act shall be published in the Gazette of India, and, on such publication, shall have effect as if enacted in this Act.

CHAPTER XII.

PROPERTY OF DECEASED PERSONS, DESERTERS AND LUNATICS.

Property of deceased persons and deserters. [2] 114. The following rules are enacted respecting the disposal of the property of every person subject to this Act who dies or deserts :—

(1) The commanding officer of the corps, detachment or department to which the deceased person or deserter belonged shall secure all the moveable property belonging to the deceased or deserter that is in camp or quarters, and cause an inventory thereof to be made, and draw any pay and allowances due to such person.

(2) In the case of a deceased person who has left in a Government savings bank (including any post office savings bank, however named) a deposit not exceeding one thousand rupees, the commanding officer may, if he thinks fit, require the secretary or other proper officer of the bank to pay the deposit to him forthwith, notwithstanding anything in any departmental rules ; and after the payment thereof in accordance with such requisition, no person shall have any right in respect of the deposit except as hereinafter provided.

(3) In the case of a deceased person whose representative is on the spot and has given security for the payment of the regimental or other debts in camp or quarters (if any) of the deceased, the commanding officer shall deliver over any property received under clauses (1) and (2) to that representative.

(4) In the case of a deceased person whose estate is not dealt with under clause (3), and in the case of any deserter, the commanding officer shall cause the moveable property to be sold by public auction, and shall pay the regimental and other debts in camp or quarters (if any), and, in

Leg. Changes :—[1] Inserted by Act X of 1917. [2] Substituted by Act XV of 1914.

the case of a deceased person, the expenses of his funeral ceremonies from the proceeds of the sale and from any pay and allowances drawn under clause (1) and from the amount of the deposit (if any) received under clause (2).

(5) The surplus, if any, shall, in the case of a deceased person, be paid to his representative (if any), or in the event of no claim to such surplus being established within twelve months after the death, then the same shall be remitted to the prescribed person.

(6) In the case of a deserter, the surplus (if any) shall be forthwith remitted to the prescribed person and shall, on the expiry of three years from the date of his desertion, be forfeited to His Majesty, unless the deserter shall in the meantime have surrendered or been apprehended.

Explanation.—A person shall be deemed to be a deserter within the meaning of this section who has without authority been absent from duty for a period of sixty days and has not subsequently surrendered or been apprehended.

115. Property deliverable and money payable to the representative of a deceased person under section 114 may, if the total value or amount thereof does not exceed one thousand rupees, and if the prescribed person thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence of title; and such delivery or payment shall be a full discharge to those ordering or making the same, and to the Secretary of State for India in Council from all further liability in respect of the property or money; but nothing in this section shall affect the rights of any executor or administrator or other representative, or of any creditor, of a deceased person, against any person to whom such delivery or payment has been made.

Application of section 114 to lunatics. 116. The provisions of section 114 shall, so far as they can be made applicable, apply in the case of a person subject to this Act becoming insane.

CHAPTER XIII.

MISCELLANEOUS.

Military Privileges.

117. (1) Any person subject to this Act who deems himself wronged by any superior or other officer, may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the officer commanding the same.

(2) When the officer complained against is the officer to whom any complaint should, under sub-section (1), be preferred, the aggrieved person may complain to such officer's next superior officer.

(3) Every officer receiving any such complaint shall examine into it, and, when necessary, refer it to superior authority.

(4) Every such complaint shall be preferred through such channels as may be from time to time specified by proper authority.

118. (1) No president or member of a court-martial, no judge advocate or superintending officer, no party to any proceeding before a court-martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court-martial, shall, while proceeding to, attending on or returning from, a court-martial, be liable to arrest under civil or revenue process.

Privileges of persons attending courts-martial.

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial.

119. (1) No person subject to this Act shall, so long as he belongs to His Majesty's Indian forces, be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue court or revenue-officer.

Exemption from arrest for debt.

(2) The judge of any such court may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section, and may, by warrant under his hand, discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(3) For the recovery of such costs no fee shall be payable to the court by the complainant.

120. Neither the arms, clothes, equipment, accoutrements or necessities of any person subject to this Act, nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and allowances of any such person or any part thereof be attached, by direction of any civil or revenue court or any revenue-officer, in satisfaction of any decree or order enforceable against him.

Property exempted from attachment.

121. Every person belonging to the Indian Reserve Forces shall, when called out for, or engaged upon, or returning from, training or service, be entitled to all the privileges accorded by sections 119 and 120 to a person subject to this Act.

Application of the last two foregoing sections to reservists.

122. (1) On the presentation to any court by or on behalf of any person subject to this Act of a certificate, from the proper military authority, of leave of absence having been granted to, or applied for by, him for the purpose of prosecuting or defending any suit or other proceeding in such court, the court shall, on the application of such person, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

Priority of hearing by courts of cases in which Indian officers and soldiers are concerned.

(2) The certificate from the proper military authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

(3) No fee shall be payable to the court in respect of the presentation of any such certificate, or in respect of any application by, or on behalf of, any such person for priority for the hearing of his case.

(4) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for having been unable to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(5) If in any case a question arises as to the proper military authority qualified to grant such certificate as aforesaid, such question shall be at once referred by the court to an officer commanding a corps, whose decision shall be final.

Deserters and Military Offenders.

123. (1) Whenever any person subject to this Act deserts, the commanding officer of the corps, department or detachment to which he belongs shall give written information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended, to military custody.

(2) Any police-officer may arrest without warrant any person reasonably believed to be subject to this Act and to be travelling without authority, and shall bring him without delay before the nearest magistrate, to be dealt with according to law.

124. (1) Any person subject to this Act who is charged with an offence may be taken into military custody.

(2) Any such person may be ordered into military custody by any superior officer.

(3) The charge against every person taken into military custody shall, without unnecessary delay, be investigated by the proper military authority, and, as soon as may be, either proceedings shall be taken for punishing the offence, or such person shall be discharged from custody.

125. Whenever any person subject to this Act, who is accused of any offence under this Act, is within the jurisdiction of any magistrate or police-officer, such magistrate or officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his commanding officer.

126. (1) When any person subject to this Act has been absent without due authority from his duty for a period of sixty days, a court of inquiry shall, as soon as practicable, be assembled and, upon oath or affirmation administered in the prescribed manner, shall inquire respecting the absence of the person, and the deficiency, if any, of property of the Government entrusted to his care, or of his arms, ammunition, equipments, instruments, clothing or necessities; and, if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any; and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender, or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

[1] (3) * * * * *

Disposal of Property.

[2] 126-A. When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a court-martial during a trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial, and if the property is subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

[2] 126-B. (1) After the conclusion of a trial before any court-martial, the court or the officer confirming the finding or sentence of such court-martial or any authority superior to such officer, or, in the case of a court-martial whose finding or sentence does not require confirmation, the officer commanding the army, army corps, division or brigade within which the trial was held, may make such order as it or he thinks fit for the disposal by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof, or otherwise, of any property or document produced before the court or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) Where any order has been made under sub-section (1) in respect of property regarding which an offence appears to have been committed, a copy of such order signed and certified by the authority making the same may, whether the trial was held within British India or not, be sent to a magistrate in any presidency-town or district in which such property for the time being is, and such magistrate shall thereupon cause the order to be carried into effect as if it was an order passed by such magistrate under the provisions of the Code of Criminal Procedure, 1898.

V of 1898.

Leg. Changes:—[1] Sub-section (3) was repealed by Act XI of 1918. [2] Ss. 126-A. and 126-B were added by Act XI of 1918.

Explanation.—In this section the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

Repeal.

127. The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof:

Provided that all warrants issued and persons enrolled or attested under the provisions of any of the said enactments shall be deemed to have been respectively issued, enrolled or attested under this Act.

THE SCHEDULE.
REPEAL OF ENACTMENTS.
(See section 127.)

1	2	3	4
Year.	No.	Short title.	Extent of repeal.
1869	V	The Indian Articles of War.	The whole.
1875	V	The Unattested Sepoys Act, 1875.	Ditto.
1891	XII	The Amending Act, 1891.	So much of section 2, subsection (2), and the Second Schedule as relates to the Indian Articles of War.
1894	XII	The Indian Articles of War Amendment Act, 1894.	The whole.
1897	XIV	The Indian Short Titles Act, 1897.	So much of section 2 and the Schedule as relates to Act V of 1875.
1900	I	The Indian Articles of War Amendment Act, 1900	The whole.
1901	IX	The Indian Articles of War Amendment Act, 1901.	Ditto.
1904	XIII	The Indian Articles of War Amendment Act, 1904.	Ditto.
1905	V	The Indian Articles of War Amendment Act, 1905.	Ditto.

ARMY (SUSPENSION OF SENTENCES) ACT, 1917.

(ACT IV OF 1917.)

[Passed on the 28th February, 1917.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1917	IV	Army (Suspension of Sentences) ...	Am. by Act XVIII of 1918.

An Act to authorise the suspension of certain sentences passed by Courts-martial under the Indian Army Act, 1911, and for other purposes.

WHEREAS it is expedient to authorise the suspension of sentences of imprisonment or transportation passed during the present war on persons VIII of 1911. subject to the Indian Army Act, 1911, and to make provision for other matters connected therewith; It is hereby enacted as follows:—

Short title, construction and duration.

1. (1) This Act may be called the Indian Army (Suspension of Sentences) Act, 1917, and shall be construed as one with the principal Act.

(2) It shall remain in force during the continuance of the present war, and for a period of six months thereafter.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

- (1) "committed" includes committal to prison and confinement in military custody, and "imprisonment" includes such confinement;
- (2) "competent military authority" means a superior military authority, or any general or other officer not below the rank of field officer duly authorised by a superior military authority;
- (3) "principal Act" means the Indian Army Act, 1911.
- (4) "sentence" means a sentence of transportation or imprisonment, whether originally passed on a person subject to the principal Act, or passed by way of reduction or commutation; and "sentenced" has the corresponding meaning;
- (5) "superior military authority" means any of the following, namely:—the Commander-in-Chief in India or the Officer Commanding the Army, Army Corps, Division or independent Brigade [1] in which an offender is for the time being serving, or within the limits of whose command an offender who has been committed is for the time being undergoing his sentence, [1] and includes the Officer Commanding-in-Chief of any force employed on active service, or any General Officer Commanding an army comprised in that force.

VIII of 1911.

Leg. Changes:—[1] These words were substituted for "in which the offender, at the time of his conviction, was serving" by Act XVIII of 1918.

8. 3 ACT IV OF 1917 [ARMY (SUS. OF SEN.)]. **Army (Sus. of Sen.)**

3. (1) Where a person subject to the principal Act is sentenced, the confirming officer when confirming the sentence, or, in the case of a sentence which does not require confirmation, the officer holding the trial or the President of the Court-martial when passing sentence may, notwithstanding anything in the principal Act, direct that such person be not committed [1] * * * until the orders of a superior military authority have been obtained.

(2) A superior military authority may, in the case of any such offender so sentenced,—

(a) direct that such offender shall not be committed until his orders have been obtained ;

(b) suspend the sentence whether or not the offender has already been committed.

(3) Where a sentence is suspended under this Act before the offender has been committed, he shall be released if in custody, and, notwithstanding anything in the principal Act, the sentence shall not begin to run until the offender is committed under that sentence.

(4) Where a sentence is suspended under this Act after the offender has been committed, he shall be discharged, and the currency of the sentence suspended until he is again committed under the same sentence.

(5) An offender, whose sentence has been suspended under this Act, whether or not the sentence is subsequently remitted, may be required [2] by a superior military authority [2] to serve in a corps or department other than that in which he was serving when sentenced.

(6) Where a sentence has been suspended under this Act, the case may at any time, and shall at intervals of not more than [3] four months, be reconsidered by a competent military authority, and if, on any such re-consideration, it appears to the competent military authority that the conduct of the offender since his conviction has been such as to justify a remission of the sentence, he shall remit it.

(7) A superior military authority may, at any time whilst a sentence is suspended under this Act, order that the offender be committed, and thereupon the sentence shall cease to be suspended [4] * * *.

[5] (8) Where an offender, whilst a sentence on him is suspended under this Act, is sentenced for any other offence then—

(a) if the further sentence is also suspended under this Act, the authority ordering such suspension may direct that the two sentences shall run either concurrently or consecutively ; provided that the aggregate term of imprisonment to be

Leg. Changes:—[1] The words "or dismissed from the service (if liable to such dismissal)" were omitted by Act XVIII of 1918. [2] These words were inserted by Act XVIII of 1918. [3] The word 'four' was substituted for the word 'three' by Act XVIII of 1918. [4] The words "and the prisoner, if liable to be dismissed from the service under section 15 of the principal Act, shall be forthwith dismissed from the service" were omitted by Act XVIII of 1918. [5] This sub-section was substituted for the original one by Act XVIII of 1918.

Army (Sus. of Sen.) ACT IV OF 1917 [ARMY (SUS. OF SEN.)]. S. 3

served under two or more sentences shall not exceed fourteen consecutive years ;

- (b) if the further sentence exceeds three months and is not suspended under this Act, the offender shall be deemed to have been committed on the previous sentence from the date on which the further sentence was passed unless a superior military authority otherwise directs ;
- (c) where the sentence for such other offence is a sentence of transportation, then whether or not that sentence is suspended, any previous sentence of imprisonment which has been suspended shall be avoided so far as the period of such imprisonment does not exceed that of the transportation.

(9) The powers conferred by this Act shall be in addition to, and not in derogation of, any powers as to the mitigation, remission or commutation of sentences conferred by the principal Act, and a superior military authority shall, as regards persons subject to that Act, be an authority having power to mitigate, remit or commute sentences under section 112 [1] of that Act.

[2] (10) Sentences which are suspended under this Act when this Act ceases to be in force shall be deemed to be remitted.

[2] (11) Where a punishment of dismissal has been awarded by a court-martial in addition to a sentence to which this Act applies, then, notwithstanding anything contained in the principal Act or in any rules made thereunder, such dismissal shall not take effect until the completion of the sentence or until this Act ceases to be in force, whichever is the earlier event :

Provided that, if a sentence is remitted under this Act, the punishment of dismissal shall also be remitted.

Leg. Changes:—[1] The figures "112" were substituted for the figures "99" by Act XVIII of 1918. [2] Sub-sections (10) and (11) were added by Act XVIII of 1919.

THE BANKERS' BOOKS EVIDENCE ACT, 1891.

(ACT XVIII OF 1891.)

[Passed on the 1st October, 1891.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1891	XVIII	The Bankers' Books Evidence ...	Am., Act I of 1893. Am., Act XII of 1900. Rep. in part, Act X of 1914.

An Act to amend the Law of Evidence with respect to Bankers' Books.

WHEREAS it is expedient to amend the Law of Evidence with respect to Bankers' Books ; It is hereby enacted as follows :—

Title, extent and commencement. 1. (1) This Act may be called the Bankers' Books Evidence Act, 1891.

(2) It extends to the whole of British India ; * [1]

[2] (3) * * *

Definitions. 2. In this Act, unless there is something repugnant in the subject or context,—

(1) [3] "Company" means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the Colonies or Dependencies thereof or in British India, or incorporated by an Act of Parliament or of the Governor General in Council, or by Royal Charter or Letters Patent :

(2) "bank" and "banker" mean—

(a) any company carrying on the business of bankers ;

(b) any partnership or individual to whose books the provisions of this Act shall have been extended as hereinafter provided ;

[4](c) any post office savings bank or money order office :

(3) "bankers' books" (a)—include ledgers, day-books, cash-books, account-books and all other books used in the ordinary business of a bank:

(4) "legal proceeding" means any proceeding or inquiry in which evidence is or may be given, and includes an arbitration :

(5) "the Court" means the person or persons before whom a legal proceeding is held or taken :

(6) "Judge" means a Judge of a High Court :

(7) "trial" means any hearing before the Court at which evidence is taken : and

(8) "certified copy" (b) means a copy of any entry in the books of a bank together with a certificate written at the foot of such copy that it is

Leg. Changes :—[1] The word "and" was omitted by Act X of 1914. [2] Sub-section (3) was repealed by Act X of 1914. [3] Sub-S. (1) was substituted by Act XII of 1900, S. 2. [4] Clause (c) of sub-S. (2) was added by Act I of 1893, S. 2.

Case-law :—(a) As to whether the Loan Register in the Public Debt Office in the Bank of Bengal is included within the meaning of this term, see 31 C. 284=8 C.W.N. 125. (b) Persons having *prima facie* interest, to protect which liberty to inspect must be given, may inspect the Loan Register and obtain certified copies of same, 31 C. 284.

a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business, and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.

3. The Local Government may, from time to time, by notification in the official Gazette, extend the provisions of this Act to the books of any partnership or individual carrying on the business of bankers within the territories under its administration, and keeping a set of not less than three ordinary account books, namely, a cash-book, a day-book or journal, and a ledger, and may in like manner rescind any such notification.

4. Subject to the provisions of this Act, a certified copy of any entry in a banker's book ^(a) shall in all legal proceedings be received as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise. ^(b)

5. No officer of a bank shall, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

6. (1) On the application of any party ^(c) to a legal proceeding the Court or a Judge may order that such party be at liberty to inspect ^(d) and take copies of any entries in a banker's book for any of the purposes of such proceeding, or may order ^(e) the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries, accompanied by a further certificate that no other entries are to be found in the books of the bank relevant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner hereinbefore directed in reference to certified copies.

(2) An order under this or the preceding section may be made ^(f) either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the Court or Judge shall otherwise direct.

(3) The bank may at any time before the time limited for obedience to any such order as aforesaid either offer to produce their books at the

Case-law :—(a) But not a copy of an entry in the books of a bank not within the definition of Company, 4 C.W.N. 433. (F.B.) (b) A party, who could before the Act issue a subpoena *duces tecum* for compelling a bank to produce its books, is now entitled to an order under the Act, *Re Marshfield*, 32 C. 493. (c) 5 Bom. L.R. 865 (867). (d) As to when order for inspection ought or ought not to be given, see 32 B 466 (P.C.) and 20 M. 189 (196). (e) No revision lies from an order under this section to a Bank to furnish copies of an account from its books, though it is improper, P.L.R. 1900, p. 237. (f) Order when made without notice, 5 Bom. L.R. 865.

ACT VI OF 1886 (BIRTHS, DEATHS & MARRIAGES REG.). Births

trial or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order.

7. (1) The costs of any application to the Court or a Judge under or for the purposes of this Act and the costs of anything done or to be done under an order of the Court or a Judge made under or for the purposes of this Act shall be in the discretion of the Court or Judge, who may further order such costs or any part thereof to be paid to any party by the bank if they have been incurred in consequence of any fault or improper delay on the part of the bank.

(2) Any order made under this section for the payment of costs to or by a bank may be enforced as if the bank were a party to the proceeding.

(3) Any order under this section awarding costs may, on application to any Court of Civil Judicature designated in the order, be executed by such Court as if the order were a decree for money passed by itself :

Provided that nothing in this sub-section shall be construed to derogate from any power which the Court or Judge making the order may possess for the enforcement of its or his directions with respect to the payment of costs.

THE BIRTHS, DEATHS AND MARRIAGES REGISTRATION ACT, 1886.

(ACT VI OF 1886.)

[Passed on the 18th March, 1886.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1852	V	Marriage by Registrars ...	Rep., Act XV of 1872.
1865	V	Marriage ...	Do.
1865	XV	Parsi Marriage and Divorce ...	Am., Act VI of 1886, S. 31.
1866	XXII	Extending Marriage Act (V of 1865).	Rep., Act XV of 1872.
1872	III	Special Marriage ...	Am., Act VI of 1886, S. 29.
1872	XV	Christian Marriage ...	Do. S. 30 (a), (b), (d).
1886	VI	Births, Deaths and Marriages Registration.	Rep. in pt., Act II of 1891, S. 4 (d). Rep. in pt., Act XII of 1891. Am., Act XVI of 1890. Am., Act IX of 1911.

An Act to provide for the voluntary Registration of certain Births and Deaths, for the establishment of General Registry Offices for keeping Registers of certain Births, Deaths and Marriages, and for certain other purposes.

WHEREAS it is expedient to provide for the voluntary registration of births and deaths among certain classes of persons, for the more effectual

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XV of 1872. registration of those births and deaths and of the marriages registered under Act III of 1872 or the Indian Christian Marriage Act, 1872, and of certain marriages registered under the Parsi Marriage and Divorce Act, XV of 1865. 1865, and for the establishment of general registry offices for keeping registers of those births, deaths and marriages ;

And whereas it is also expedient to provide for the authentication and custody of certain existing registers made otherwise than in the performance of a duty specially enjoined by the law of the country in which the registers were kept, and to declare that copies of the entries in those registers shall be admissible in evidence ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title and commencement. 1. (1) This Act may be called the Births, Deaths and Marriages Registration Act, 1886 ; and

(2) It shall come into force on such day as the Governor General in Council, by notification in the Gazette of India, directs.

[1] (3) * * * *

2. This Act extends to the whole of British India and applies also, within the dominions of Princes and States in India in alliance with Her Majesty, to British subjects in those dominions.

Definitions. 3. In this Act, unless there is something repugnant in the subject or context,—

“ sign ” includes mark, when the person making the mark is unable to write his name :

“ prescribed ” means prescribed by a rule made by the Governor General in Council under this Act : and

“ Registrar of Births and Deaths ” means a Registrar of Births and Deaths appointed under this Act.

4. Nothing in this Act, or in any rule made under this Act, shall affect any law heretofore or hereafter passed providing for the registration of births and deaths within particular local areas.

5. All powers conferred by this Act may be exercised from time to time as occasion requires.

CHAPTER II.

GENERAL REGISTRY OFFICES OF BIRTHS, DEATHS AND MARRIAGES.

Establishment of general registry offices and appointment of Registrars General. 6. (1) Each Local Government—

(a) shall establish a general registry office for keeping such certified copies of registers of births and deaths registered under this

Leg. Changes :—[1] Sub-S. (3) of S. 1 was repealed by the Repealing and Amending Act XII of 1891.

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Act, or marriages registered under Act III of 1872 (*to provide a form of marriage in certain cases*) or the Indian Christian Marriage Act, 1872, or, beyond the local limits of the ordinary XV of 1872. original civil jurisdiction of the High Court of Judicature at Bombay, under the Parsi Marriage and Divorce Act, 1865, as XV of 1865. may be sent to it under this Act, or under any of the three last-mentioned Acts, as amended by this Act; and

- (b) may appoint to the charge of that office an officer, to be called the Registrar General of Births, Deaths and Marriages, for the territories under its administration :

(2) Provided that the Governor of Bombay in Council may, with the previous sanction of the Governor General in Council, establish two general registry offices and appoint two Registrars General of Births, Deaths and Marriages for the territories under his administration; one of such general registry offices and of such Registrars General being established and appointed for Sindh and the other for the other territories under the administration of the Governor of Bombay in Council.

7. Each Registrar General of Births, Deaths and Marriages shall cause indexes of all the certified copies of registers sent to his office under this Act or under Act III of 1872, the Indian Christian Marriage Act, 1872, or the Parsi Marriage and Divorce Act, 1865, as amended by this XV of 1865, Act, to be made and kept in his office in the prescribed form.

Indexes to be kept at general registry office.

8. Subject to the payment of the prescribed fees, the indexes so made shall be at all reasonable times open to inspection by any person applying to inspect them, and copies of entries in the certified copies of the registers to which the indexes relate shall be given to all persons applying for them.

Indexes to be open to inspection.

9. A copy of an entry given under the last foregoing section shall be certified by the Registrar General of Births, Deaths and Marriages, or by an officer authorized in this behalf by the Local Government, and shall be admissible in evidence for the purpose of proving the birth, death or marriage to which the entry relates.

Copies of entries to be admissible in evidence.

10. Each Registrar General of Births, Deaths and Marriages shall exercise a general superintendence over the Registrars of Births and Deaths in the territories for which he is appointed.

Superintendence of Registrars by Registrar General.

CHAPTER III.

REGISTRATION OF BIRTHS AND DEATHS.

A.—Application of this Chapter.

11. (1) The persons whose births and deaths shall, in the first instance, be registrable under this Chapter are the following, namely :—

Persons whose births and deaths are registrable.

- (a) in British India, the members of every race, sect or tribe to which the Indian Succession Act, 1865, applies, and in respect X of 1865.

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of which an order under section 332 of that Act is not for the time being in force, and all persons professing the Christian religion ;

(b) in the dominions of Princes and States in India in alliance with Her Majesty, British subjects being members of a like race, sect or tribe, or professing the Christian religion :

(2) But the Local Government, by notification in the Official Gazette, may, with the previous approval of the Governor General in Council, extend the operation of this Chapter to any other class of persons either generally or in any local area.

B.—Registration Establishment.

12. The Local Government may appoint, either by name or by virtue of their office, so many persons as it thinks necessary to be Registrars of Births and Deaths for such local areas within the territories under its administration as it may define and, if it sees fit, for any class of persons within any part of those territories.

Power for Local Government to appoint Registrars for its territories.

13. The Governor General in Council may, by notification in the Gazette of India, appoint, either by name or by virtue of their office, so many persons as he thinks necessary to be Registrars of Births and Deaths for such local areas within the dominions of any Prince or State in India in alliance with Her Majesty as he may define and, if he sees fit, for any class of persons within any part of those dominions.

Power for Governor General in Council to appoint Registrars for Native States

14. Every Registrar of Births and Deaths shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Registrar to be deemed a public servant.

XLV of 1860.

15. (1) The Local Government or the Governor General in Council, as the case may be, may suspend, remove or dismiss any Registrar of Births and Deaths.

Power to remove Registrars.

(2) A Registrar of Births and Deaths may resign by notifying in writing to the Local Government or to the Governor General in Council, as the case may be, his intention to do so, and, on his resignation being accepted by the Local Government or the Governor General in Council, he shall be deemed to have vacated his office.

16. (1) Every Registrar of Births and Deaths shall have an office in the local area, or within the part of the territories or dominions for which he is appointed.

Office and attendance of Registrar.

(2) Every Registrar of Births and Deaths to whom the Local Government may direct this sub-section to apply shall attend at his office for the purpose of registering births and deaths on such days and at such hours as the Registrar General of Births, Deaths and Marriages may direct, and shall cause to be placed in some conspicuous place on or near the outer door of his office his name, with the addition of Registrar of Births and Deaths for the local area or class for which he is appointed, and the days and hours of his attendance.

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17. (1) When any Registrar of Births and Deaths to whom the Local Government may direct this section to apply, not being a Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay, is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate, or such other officer as the Local Government appoints in this behalf, shall be the Registrar of Births and Deaths during such absence or until the Local Government fills the vacancy.

Absence of Registrar or vacancy in his office.

(2) When any such Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf shall be the Registrar of Births and Deaths during such absence or until the Local Government fills the vacancy.

(3) The Registrar General of Births, Deaths and Marriages shall report to the Local Government all appointments made by him under this section.

18. The Local Government shall supply every Registrar of Births and Deaths with a sufficient number of register books of births and of register books of deaths, and shall make suitable provision for the preservation of the records connected with the registration of births and deaths.

Register books to be supplied and preservation of records to be provided for.

C.—Mode of Registration.

19. Every Registrar of Births and Deaths, on receipt of notice of a birth or death within the local area or among the class for which he is appointed, shall, if the notice is given within the prescribed time and in the prescribed mode by a person authorized by this Act to give the notice, forthwith make an entry of the birth or death in the proper register book :

Duty of Registrar to register births and deaths of which notice is given.

Provided that—

- (a) if he has reason to believe the notice to be in any respect false, he may refuse to register the birth or death until he receives an order from the Judge of the District Court directing him to make the entry and prescribing the manner in which the entry is to be made ; and
- (b) he shall not enter in the register the name of any person as father of an illegitimate child, unless at the request of the mother and of the person acknowledging himself to be the father of the child.

20. Any of the following persons may give notice of a birth, namely :—

Persons authorized to give notice of birth.

- (a) the father or mother of the child ;

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- (b) any person present at the birth ;
- (c) any person occupying, at the time of the birth, any part of the house wherein the child was born and having knowledge of the child having been born in the house ;
- (d) any medical practitioner in attendance after the birth and having personal knowledge of the birth having occurred ;
- (e) any person having charge of the child.

Persons authorized
to give notice of
death.

21. Any of the following persons may give notice of a death, namely :—

- (a) any relative of the deceased having knowledge of any of the particulars required to be registered concerning the death ;
- (b) any person present at the death ;
- (c) any person occupying, at the time of the death, any part of the house wherein the death occurred and having knowledge of the deceased having died in the house ;
- (d) any person in attendance during the last illness of the deceased ;
- (e) any person who has seen the body of the deceased after death.

Entry of birth or
death to be signed
by person giving
notice.

22. (1) When an entry of a birth or death has been made by the Registrar of Births and Deaths under section 19, the person giving notice of the birth or death must sign the entry in the register in the presence of the Registrar :

[1] Provided that it shall not be necessary for the person giving notice to attend before the Registrar or to sign the entry in the register if he has given such notice in writing and has furnished to the satisfaction of the Registrar such evidence of his identity as may be required by any rules made by the Local Government in this behalf.

(2) Until the entry has been so signed, [1] or the conditions specified in the proviso to sub-section (1) have been complied with, [1] the birth or death shall not be deemed to be registered under this Act.

(3) When the birth of an illegitimate child is registered, and the mother and the person acknowledging himself to be the father of the child jointly request that that person may be registered as the father, the mother and that person must both sign the entry in the register in the presence of the Registrar.

23. The Registrar of Births and Deaths shall, on application made at the time of registering any birth or death by the person giving notice of the birth or death, and on payment by him of the prescribed fee, give to the applicant a certificate in the prescribed form, signed by the Registrar of having registered the birth or death.

Grant of certifi-
cate of registration
of birth or death.

S. 27 ACT VI OF 1886 (BIRTHS, DEATHS & MARRIAGES REG.). Births.

24. (1) Every Registrar of Births and Deaths in British India shall send to the Registrar General of Births, Deaths and Marriages for the territories within which the local area or class for which he is appointed is situate or resides, at the prescribed intervals, a true copy certified by him, in the prescribed form, of all the entries of births and deaths in the register book kept by him since the last of those intervals:

Duty of Registrars as to sending certified copies of entries in register books to Registrar General.

Provided that in the case of Registrars of Births and Deaths who are clergymen of the Churches of England, Rome and Scotland, the Registrar may, if so directed by his ecclesiastical superior, send the certified copies in the first instance to that superior, who shall send them to the proper Registrar General of Births, Deaths and Marriages.

In this sub-section "Church of England" and "Church of Scotland" mean the Church of England and the Church of Scotland as by law established respectively: and "Church of Rome" means the Church which regards the Pope of Rome as its spiritual head.

(2) The provisions of sub-section (1) shall apply to every Registrar of Births and Deaths in the dominions of any Prince or State in India in alliance with Her Majesty, with this modification that the certified copies referred to in that sub-section shall be sent to such one of the Registrars General of Births, Deaths and Marriages as the Governor General in Council, by notification in the Gazette of India, appoints in this behalf.

25. (1) Every Registrar of Births and Deaths shall, on payment of the prescribed fees, at all reasonable times, allow searches to be made in the register books kept by him, and give a copy of any entry in the same.

Searches and copies of entries in register books.

(2) Every copy of an entry in a register book given under this section shall be certified by the Registrar of Births and Deaths, and shall be admissible in evidence for the purpose of proving the birth or death to which the entry relates.

26. Notwithstanding anything in section 19, the [1] Local Government [1] may make rules authorizing Registrars of Births and Deaths, on conditions and in circumstances to be specified in the rules, to register births and deaths occurring outside the local areas or classes for which they are appointed.

Exceptional provision for registration of certain births and deaths.

D.—Penalty for False Information.

27. If any person wilfully makes, or causes to be made, for the purpose of being inserted in any register of births or deaths, any false statement in connection with any notice of a birth or death under this Act, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Penalty for wilfully giving false information.

Leg. Changes:—[1] Substituted by Act IX of 1911, S. 3, for the words: "Governor General in Council."

E.—Correction of Errors.

28. (1) If it is proved to the satisfaction of a Registrar of Births and Deaths that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, he may, subject to such rules as may be made by the [1] Local Government [1] with respect to the conditions and circumstances on and in which errors may be corrected, correct the error by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction.

(2) If a certified copy of the entry has already been sent to the Registrar General of Births, Deaths and Marriages, the Registrar of Births and Deaths shall make and send a separate certified copy of the original erroneous entry and of the marginal correction therein made.

CHAPTER IV.

AMENDMENT OF MARRIAGE ACTS.

29. After section 13 of Act III of 1872 (*to provide a form of marriage in certain cases*) the following section shall be inserted, namely:—

“13-A. The Registrar shall send to the Registrar General of Births, Deaths and Marriages for the territories within which his district is situate, at such intervals as the Governor General in Council from time to time directs, a true copy certified by him, in such form as the Governor General in Council from time to time, prescribes, of all entries made by him in the said marriage-certificate book since the last of such intervals.”

XV of 1872. Amendment of the Indian Christian Marriage Act, 1872.

30. In the Indian Christian Marriage Act, 1872, the following amendments shall be made, namely:—

- (a) at the end of section 3, the words “ ‘Registrar General of Births, Deaths and Marriages’ means a Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886,” shall be added;
- (b) for the words “Secretary to the Local Government” wherever they occur, and for the words “Secretary to a Local Government” in section 79, the words “Registrar General of Births, Deaths and Marriages” shall be substituted;

[2] (c) * * *

- (d) in section 81, after the words “Registrar General of Births, Deaths and Marriages” the words “in England” shall be added.

Leg. Changes:—[1] Substituted by Act IX of 1911, S. 3, for the words “Governor General in Council.” [2] Cl. (c) was repealed by Act II of 1891, S. 4 (2).

S. 33 ACT VI OF 1866 (BIRTHS, DEATHS & MARRIAGES REG.). Births

Addition of new section after section 8 of the Parsi Marriage and Divorce Act, 1865.

31. After section 8 of the Parsi Marriage and Divorce Act, 1865, the following section shall be inserted, namely:—

“8-A. Every Registrar, except the Registrar appointed by the Chief Justice of the High Court of Judicature at Bombay, shall, at such intervals as the Governor General in Council from time to time directs, send to the Registrar General of Births, Deaths and Marriages for the territories administered by the Local Government by which he was appointed a true copy certified by him, in such form as the Governor General, from time to time prescribes, of all certificates entered by him in the said register of marriages since the last of such intervals.”

Transmission of certified copies of certificates in marriage register to Registrar General of Births, Deaths and Marriages.

CHAPTER V.

SPECIAL PROVISIONS AS TO CERTAIN EXISTING REGISTERS.

32. If any person in British India, or in the dominions of any Prince or State in India in alliance with Her Majesty, has for

Permission to persons having custody of certain records to send them within one year to Registrar General.

the time being the custody of any register or record of birth, baptism, naming, dedication, death or burial of any persons of the classes referred to in section 11, sub-section (1) or of any register or record of marriage of any persons of the classes to which Act III of 1872 or the Indian Christian Marriage Act, 1872, or the

Parsi Marriage and Divorce Act, 1865, applies, and if such register or record has been made otherwise than in performance of a duty specially enjoined by the law of the country in which the register or record was kept, he may, [1] at any time before the first day of April, 1891, [1] send the register or record to the office of the Registrar General of Births, Deaths and Marriages for the territories within which he resides, or, if he resides within the dominions of any such Prince or State as aforesaid, to such one of the Registrars General as aforesaid as the Governor General in Council, by notification in the Gazette of India, directs in this behalf.

33. (1) The Governor General in Council may appoint so many persons as he thinks fit to be Commissioners for examining the registers or records sent to the Registrar General of Births, Deaths and Marriages under the last foregoing section.

Appointment of Commissioners to examine registers.

(2) The Commissioners so appointed shall hold office for such period as the Governor General in Council, by the order of appointment, or any subsequent order, directs.

Leg. Changes :—[1] Substituted by Act XVI of 1890, S. 1, for the expression “within one year from the date on which this Act comes into force.”

34. (1) The Commissioners appointed under the last foregoing section shall enquire into the state, custody and authenticity of every such register or record as may be sent to the Registrar General of Births, Deaths and Marriages under section 32 ;

and shall deliver to the Registrar General a descriptive list or descriptive lists of all such registers or records, or portions of registers or records, as they find to be accurate and faithful.

(2) The list or lists shall contain the prescribed particulars and refer to the registers or records, or to the portions of the registers or records, in the prescribed manner.

(3) The Commissioners shall also certify in writing, upon some part of every separate book or volume containing any such register or record, or portion of a register or record, as is referred to in any list or lists made by the Commissioners, that it is one of the registers or records, or portions of registers or records, referred to in the said list or lists.

35. (1) Subject to the payment of the prescribed fees, the descriptive list or lists of registers or records, or portions of registers or records, delivered by the Commissioners to the Registrar General of Births, Deaths and Marriages shall be, at all reasonable times, open to inspection by any person applying to inspect it or them, and copies of entries in those registers or records shall be given to all persons applying for them.

(2) A copy of an entry given under this section shall be certified by the Registrar General of Births, Deaths and Marriages, or by an officer or person authorized in this behalf by the Local Government, and shall be admissible in evidence for the purpose of proving the birth, baptism, naming, dedication, death, burial or marriage to which the entry relates.

[1] 35-A. (1) The Governor General in Council, if he thinks fit, may, by notification in the Gazette of India, appoint more commissions than one for the purposes of this Chapter, each such commission consisting of so many and such members as he may, by a like notification, nominate thereto by name or by office, and having its functions restricted to the disposal, under this Act, and the rules thereunder, of the registers or records sent under section 32 to such Registrar General or Registrars General as the Governor General in Council may, by a like notification, specify in this behalf.

(2) If more commissions than one are appointed in exercise of the power conferred by sub-section (1), then references in this Act to the Commissioners shall be construed as references to the members constituting a commission so appointed.

S. 37 ACT VI OF 1886 (BIRTHS, DEATHS & MARRIAGES REG.). Births

CHAPTER VI.

RULES.

Rules.

[1] 36. (1) The Local Government may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) fix the fees payable under this Act ;
- (b) prescribe the forms required for the purposes of this Act ;
- (c) prescribe the time within which, and the mode in which, persons authorized under this Act to give notice of a birth or death to a Registrar of Births and Deaths must give the notice ;
- (d) prescribe the evidence of identity to be furnished to a Registrar of Births and Deaths by persons giving notice of a birth or death in cases where personal attendance before such Registrar is dispensed with ;
- (e) prescribe the registers to be kept and the form and manner in which Registrars of Births and Deaths are to register births and deaths under this Act, and the intervals at which they are to send to the Registrar General of Births, Deaths and Marriages true copies of the entries of births and deaths in the registers kept by them ;
- (f) prescribe the conditions and circumstances on and in which Registrars of Births and Deaths may correct entries of births and deaths in registers kept by them ;
- (g) prescribe the particulars which the descriptive list or lists to be prepared by the Commissioners appointed under Chapter V are to contain, and the manner in which they are to refer to the registers or records, or portions of registers or records, to which they relate ; and
- (h) prescribe the custody in which those registers or records are to be kept.

(3) Every power to make rules conferred by this Act is subject to the condition of the rules being made after previous publication.

(4) All rules made under this Act shall be published in the local official Gazette, and on such publication shall have effect as if enacted in this Act.

37. [Procedure for making and publication of rules.] Rep. by the Births, Deaths and Marriages Registration (Amendment) Act, 1911 (IX of 1911), S. 5.

Continuation of rules heretofore made by Governor General in Council.

[2] All rules heretofore made under the said Act by the Governor General in Council shall, after the commencement of this Act, be deemed to have been made by the Local Government.

Leg. Changes :—[1] Substituted by Act IX of 1911, S. 4. [2] Enacted by and in S. 6 of Act IX of 1911.

Cantonments ACT XV OF 1910 (CANTONMENTS).

THE CANTONMENTS ACT, 1910.

(ACT XV OF 1910.)

[Passed on the 5th August, 1910.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1810	Reg. XX (Bengal)	Military Bazaars ...	Rep., Act XIII of 1889.
1827	Reg. XXII (Bombay).	Military Authority ...	Do. do.
1853	Act XXVIII (Imperial).	Sale of Spirits in Cantonments.	Do. do.
1854	Act IV (Imperial).	Sentences of Superintendents of Bazaars.	Do. do.
1860	Act XLV (Imperial).	Penal Code ...	Rep. in part, do. (certain words in S. 193, Expl. I).
1864	Act XX (Imperial).	Military Cantonments ...	Rep., Act III of 1880.
1865	Act IV (Madras).	Madras Cantonments ...	Do. Act XIII of 1889.
1866	Act I (Madras).	Do.	Do. do.
1867	Act III (Bombay).	Bombay Cantonment Act of 1867.	Do. do.
1869	Act V (Imperial).	Indian Articles of War ...	Rep. and Am. in part, Act XIII of 1889.
1870	Act VII (Imperial).	Court Fees Act ...	Rep. in part, Act XIII of 1889.
1874	Act XV (Imperial).	Laws Local Extent Act ...	Do. do.
1875	Act XX (Imperial).	Central Provinces Laws Act...	Do. do.
1876	Act XVIII (Imperial).	Oudh Laws Act ...	Do. do.
1877	Reg. III (Ajmere).	Ajmere Laws Regulation ...	Do. do.
1877	Act III (Imperial)	Registration Act ...	Do. do.
1878	Act VII (Bengal).	Bengal Excise ...	Do. do.
1879	Act XIV (Imperial).	Hackney Carriage Act ...	Do. do.
1880	Act III (Imperial)	Cantonments Act ..	Do. do.
1881	Act XXII (Imperial).	Excise Act ...	Do. do.
1882	Act X (Imperial)	Code of Criminal Procedure...	Do. do.
1882	Act XIV (Imperial).	Code of Civil Procedure ...	Do. do.
1886	Act XX (Imperial).	Upper Burma Laws Act ...	Do. do.
1889	Act XIII (Imperial).	Cantonments Act ...	Rep., Act XV of 1910.
1891	Act I (Imperial), S. 11.	Cattle-trespass Act Amend-ment Act.	Do. do.
1891	Act XII (Imperial). Part I, Sch. II relating to Cantonments Act, 1889.	Amending Act ...	Do. do.

Year.	No. of Act.	Name of Act.	How affected.
1894	Act XII (Imperial), S. 5.	Articles of War Amendment Act.	Rep., Act VIII of 1911.
1896	Act XII (Imperial) Sch. relating to Cantonments Act, 1889.	Excoise Act ...	Do. do. §
1897	Act XV (Imperial).	Cantonments Act ...	Do. do.
1898	Act V (Imperial), S. 2 relating to Cantonments Act, 1889.	Code of Criminal Procedure...	Do. do. §
1898	Act XIII (Imperial), S. 18, as to Burma.	Burma Laws Act ...	
1902	Act II	Cantonments (House-Accommodation). Repealing and Amending Act.	Rep., Act XV of 1910.
1903	Act I (Imperial), Part II, Sch. II relating to Cantonments Act, 1889.		
1909	Act V (Imperial), Sch. relating to Cantonments Act, 1889.	Amending Army Act ...	Do. do.
1910	XY	Cantonments ...	Am. and Rep. in part, Act X of 1914.

An Act to consolidate and amend certain Acts relating to Cantonments.

WHEREAS it is expedient to consolidate and amend certain Acts relating to cantonments ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title and extent. 1. (1) This Act may be called the Cantonments Act, 1910.

(2) It extends to the whole of British India.

Interpretation. 2. In this Act, unless there is anything repugnant in the subject or context,—

(a) " officer " (a) means—

- (i) a person who, being an officer within the meaning of the Army Act, is commissioned and in pay as an officer doing military duty with His Majesty's regular forces as defined in that Act or as an officer doing such duty in any arm, branch or part of those forces ; and
- (ii) a person doing military duty as a warrant officer with those forces or with any arm, branch or part thereof, whether he is or is not an officer within the meaning of the Army Act :

Case-law :—(a) Does not include a police officer, 1 S.L.R. 137.

- (b) "soldier" means a person who is a soldier of His Majesty's regular forces within the meaning of the Army Act, and is not an officer within the meaning of this Act:
- (c) "spirituous liquor" means any fermented liquor, any wine, any alcoholic liquid obtained by distillation, and the sap of any kind of palm-tree, and includes any other liquid consisting of or containing alcohol which the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the official Gazette, declare to be a spirituous liquor for the purposes of this Act:
- (d) "intoxicating drug" means opium, ganja, bhang, charas and every preparation and admixture thereof, and includes any other intoxicating substance or liquid which the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the official Gazette, declare to be an intoxicating drug for the purposes of this Act: and
- (e) "owner" includes the person who is receiving or entitled to receive the rent of any building or land, whether on his own account or on behalf of himself and others or as an agent or trustee, or who would so receive the rent or be entitled to receive it if the building or land were let to a tenant.

CHAPTER II.

CANTONMENTS AND CANTONMENT AUTHORITIES, COURTS AND POLICE.

Cantonments.

3. (1) The Local Government, with the previous sanction of the Governor General in Council, may, by notification in the official Gazette, declare any place [1] [or places] in which any of His Majesty's regular forces are quartered [1] [or which, being in the vicinity of such place or places, are required for the service of the troops] within the territories administered by such Government to be a cantonment for the purposes of this Act and of all other enactments for the time being in force.

(2) The Local Government, with the like sanction, may also, by a like notification, define (a) the limits of any cantonment for the like purposes.

Cantonment Authorities and Magistrates.

4. For every cantonment beyond the limits of a presidency-town there shall be a cantonment authority and a Cantonment Magistrate.

5. (1) The expression "cantonment authority" as used in this Act means a cantonment committee or, where a cantonment committee has not been constituted or has in pursuance of an order of the Local Government ceased to exist, or for any reason cannot be convened, then, subject to any rules made under section 24, clause (5), the commanding officer of the cantonment.

Leg. Changes :—[1] Inserted by Act X of 1914.

Case-law :—(a) Means define by way of extension as well as by way of retrenchment, 24 P.R. 1910=209 P.L.R. 1910=37 P.W.R. 1910=5 Ind. Cas. 905.

(2) The Local Government shall determine, with respect to every cantonment in which troops are for the time being quartered, whether or not a cantonment committee is to be constituted.

(3) The cantonment authority shall be deemed to be a local authority as defined in the Cattle-trespass Act, 1871, the Local Authorities Loan Act, 1879, the Indian Telegraph Act, 1885, and the General Clauses Act, 1897. I of 1871.
XI of 1879.
XIII of 1885.
X of 1897.

6. The Cantonment Magistrate ^(a) shall be a Magistrate appointed by the Local Government under section 12 of the Code of Criminal Procedure, 1898, and, as such, subordinate to V of 1898, the District Magistrate ^(b) or to the District Magistrate and the Sub-divisional Magistrate, as the case may be, under section 17 of that Code.

Cantonment Court of Small Causes.

7. (1) When the Local Government appoints the Cantonment Magistrate to be the Judge of a Court of Small Causes established within a cantonment under the Provincial Small Cause Courts Act, 1887, it shall, in its order IX of 1887, appointing him to be such Judge, declare, and may by notification in the official Gazette vary, within a limit of five hundred rupees, the value of the suits which are to be cognizable by him under that Act.

(2) The provisions of section 15, sub-section (3) of the said Act shall not apply to a Court of Small Causes of which a Cantonment Magistrate is the Judge.

8. When the Local Government appoints an Additional Judge of a Court of Small Causes, of which a Cantonment Magistrate is the Judge, it shall, in its order appointing him to be such Additional Judge, declare, and may by notification in the official Gazette vary, within a limit of fifty rupees, the value of the suits with respect to which the functions of the Judge of the Court may be assigned to, and discharged by, the Additional Judge under section 8 of the Provincial Small Cause Courts Act, 1887. IX of 1887.

9. A Cantonment Magistrate as Judge of a Court of Small Causes may, whatever may be the value of the suits cognisable by him as such Judge, dispose of any suit which was within the pecuniary limits of the jurisdiction of the Judge presiding over the Court at the time of the institution of the suit, and may entertain and dispose of any proceeding after decree in any such suit.

Case-law :—(a) Is a Magistrate appointed under S. 12, Crim. Pro. Code, and appeals lie from convictions by him, 1 P.R. 1897, Cr.; High Court can transfer criminal case from Cantonment Magistrate's Court to itself or to any other competent Criminal Court, 9 B. 333; see, also, 5 Bom. L.R. 869. (b) Can decide under S. 528, Crim. Pro. Code, whether case before Cantonment Magistrate should be transferred or not, Rat. Un. Cr. C. 849.

Cantonment Police.

XXIV of 1859.
V of 1861.
Bom. IV of 1890

10. (1) The police-force employed in a cantonment beyond the limits of a presidency-town shall, for the purposes of the Madras District Police Act, 1859, or the Police Act, 1861, or the Bombay District Police Act, 1890, as the case may be, be deemed to be part of the general police-establishment under the superintendence of the Local Government in whose territories the cantonment is situated.

V of 1861.

(2) The area comprised within the limits of a cantonment shall be deemed to be a town for the purposes of section 34 of the Police Act, 1861.

CHAPTER III.

SPIRITUOUS LIQUORS AND INTOXICATING DRUGS.

11. If within a cantonment, or within such limits around a cantonment as the Local Government may, by notification in the official Gazette, prescribe in this behalf, any person not subject to military law or any person subject to military law otherwise than as an officer or soldier knowingly barter, sells^(a) or supplies^(b), or offers or attempts to barter, sell or supply, any spirituous liquor^(c) or intoxicating drug, to or for the use of any soldier^(d) or follower or soldier's wife, without the written permission of the commanding officer of the cantonment or of some person authorised by the commanding officer to grant such permission, he shall be punishable with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both^(e).

Unauthorized possession of spirituous liquor.

12. If within a cantonment, or within such limits around a cantonment as the Local Government may, by notification in the official Gazette, prescribe in this behalf,—

(a) any person subject to military law otherwise than as an officer or soldier, or

(b) the wife or servant of any such person or of a soldier,

has in his or her possession except on behalf of the Government or for the private use of an officer more than one quart of any spirituous liquor other than fermented malt-liquor without the written permission of the commanding officer of the cantonment or of some person authorised by the commanding officer to grant such permission, he or she shall be punishable in the case of a first offence against this section with fine which may extend to fifty rupees, and in the case of a subsequent offence against this section with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months.

Case-law :—(a) Barter or sells, meaning of, 31 B. 523=9 Bom. L.R. 703=6 Cr. L.J. 67. (b) Servant supplying liquor to master commits no offence, 31 B. 523=6 Cr. L.J. 67. (c) Spirituous liquor, meaning of, 15 C 452; beer not spirituous liquor, 7 M.H. C.R. Ap. 15. (d) Does not include sub-conductor in the Commissariat, 3 A. 214; nor one discharging civil duties, Oudh S.C. 104. (e) Whipping cannot be awarded under this section, Rat. Un. Cr. C. 692.

13. (1) Any police-officer or excise-officer may, without an order from a Magistrate and without a warrant, arrest any person whom he finds committing an offence against section 11 or section 12, and may seize and detain any spirituous liquor or intoxicating drug in respect of which such an offence has been committed, and any vessels or coverings in which the liquor or drug is contained.

Arrest of persons and seizure and confiscation of things for offences against the two last foregoing sections.

(2) Where a person accused of an offence against section 11 has been previously convicted of an offence against that section, an officer in charge of a police-station may, with the written permission of a Magistrate, seize and detain any spirituous liquor or intoxicating drug within the cantonment, or within the limits prescribed under section 11, which at the time of the alleged commission of the subsequent offence belonged to, or was in the possession of, the person.

(3) The Court convicting a person of an offence against section 11 or section 12 may order the confiscation of the whole or any part of anything seized under sub-section (1) or sub-section (2).

(4) Subject to the provisions of Chapter XLIII of the Code of Criminal Procedure, 1898, anything seized under sub-section (1) or sub-V of 1898. section (2) and not confiscated under sub-section (3) shall be restored to the person from whom it was taken.

Saving of articles sold or supplied for medicinal purposes.

14. The foregoing provisions of this Chapter shall not apply to the sale or supply of any article for medicinal purposes by a medical practitioner, chemist or druggist.

CHAPTER IV.

TAXATION AND CANTONMENT FUND.

Taxation.

General power of taxation.

15. (1) With the previous sanction of the Governor General in Council, the Local Government may, by notification in the official Gazette,—

- (a) impose in any cantonment which is not included in a municipality any tax which, under any enactment in force at the date of the notification, can be imposed in any municipality within the territories administered by such Government; and
- (b) abolish or modify any tax so imposed.

(2) When any tax is leviable in a cantonment in pursuance of a notification under sub-section (1), the Local Government, subject to the like sanction, may, by a like notification, apply or adapt to the cantonment the provisions of any enactment or rules in force at the date of the notification in any municipality within the territories administered by such Government relating to—

- (a) the assessment, collection or recovery of any tax;
- (b) the refund or revision of, or exemption from, any such tax; and
- (c) the punishment of any breach of such enactment or rules.

XX of 1856. **Extension of Act XX of 1856, to certain cantonments.** 16. (1) The Local Government may, by notification in the official Gazette, extend the provisions of the Bengal Chaukidari Act, 1856, to any cantonment which is not included in a municipality and which is situated in any part of British India in which that Act is in force, and the Cantonment Magistrate may exercise all the powers of the Magistrate under that Act, subject only to the control of the District Magistrate and the Local Government.

XX of 1856. (2) The Local Government may order that a cantonment to which the provisions of the Bengal Chaukidari Act, 1856, have been extended shall be divided into any number of cantonment divisions, and may determine the nature of the tax to be levied in each such division according to section 10 of that Act.

XX of 1856. **Restriction of power of taxation in cantonments in which Act XX of 1856 is in force.** 17. While a tax assessed according to the circumstances, and the property to be protected, of the persons liable thereto, or according to the annual value of houses and grounds, is levied under the Bengal Chaukidari Act, 1856, in a cantonment, a tax on persons practising any profession or art or carrying on any trade or calling or a tax on buildings and lands, as the case may be, shall not be leviable in the cantonment in pursuance of a notification under section 15 of this Act.

XI of 1881. **Power to prohibit or exempt from taxation.** 18. (1) Notwithstanding anything in any enactment for the time being in force, the Governor General in Council may, by notification in the Gazette of India, prohibit the levy of the whole or any part of any tax imposed in a cantonment, or exempt any person by name or in virtue of his office or any class of persons, or any property or any class of property, from the operation of any such tax.

XI of 1881. (2) Where the area subject to the authority of a municipal committee as defined in section 2 of the Municipal Taxation Act, 1881, includes the whole or part of a cantonment, nothing in section 4 or section 5 of that Act or in any other like enactment for the time being in force shall apply to so much of that area as is comprised in the cantonment.

Cantonment Fund.

19. (1) There shall be formed for every cantonment which is not included in a municipality a cantonment fund, and there shall be placed to the credit thereof, among other sums, the following :—

V of 1898. (a) subject to deductions under section 545 of the Code of Criminal Procedure, 1898, or under any other enactment for the time being in force or under any order of the Local Government, all fines recovered from persons convicted of offences committed within the cantonment against this Act or against any enactment extended or rule made thereunder, or against the provisions of section 34 of the Police Act, 1861, or the corresponding enactment for the time being in force in the territories administered by the Governor of Fort St. George in Council or by the Governor of Bombay in Council,

or against the provisions of Chapter XIII or Chapter XIV of the Indian Penal Code, or of section 156 of the Army Act ;

XLV of 1860.
44 & 45 Vict.,
c. 58.

(b) the proceeds of taxes imposed under section 15 or levied under the Bengal Chaukidari Act, 1856, in the cantonment ; and

XX of 1856.

(c) rents and profits accruing from property placed by the Government under the management of the cantonment authority.

(2) Notwithstanding anything in any enactment as to the purposes to which the proceeds of a tax are to be appropriated, the cantonment fund shall be applicable, subject to the rules under this Act, to the maintenance of the police-force employed in the cantonment and to the other purposes of this Act within the cantonment and, with the general or special sanction of the Local Government, to like objects, within or without British India, beyond the limits of the cantonment in cases in which, in the opinion of the Local Government, the application of the fund beyond those limits is for the benefit of the inhabitants of the cantonment or of any military force ordinarily quartered therein or of any detachment of any such force.

20. (1) Where, in or near a cantonment, there is a Government treasury or sub-treasury or a bank to which the Government treasury business has been made over, the cantonment fund shall be kept in the treasury, sub-treasury or bank.

Custody of cantonment fund.

(2) Where there is no such treasury, sub-treasury or bank, the cantonment fund may be deposited with any banker or person acting as a banker, who has given such security for the safe custody and re-payment on demand of the fund so deposited as the District Magistrate may in each case think sufficient.

21. The cantonment fund shall be vested in His Majesty, and, subject to the provisions of this Act and of the rules thereunder and to the control of the Local Government, the management of the fund shall be entrusted to the cantonment authority.

Vesting and management of cantonment fund.

22. The cantonment fund shall be deemed to be " public revenues " within the meaning of the proviso to section 6 of the Land Acquisition Act, 1894, and I of 1894. any property acquired at the cost of the cantonment fund shall vest in His Majesty.

Acquisition of immoveable property at cost of cantonment fund.

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

23. The Governor General in Council may, by notification in the Gazette of India, extend to all cantonments or to any cantonment or to any part of any cantonment any enactment for the time being in force in any municipality in British India, and declare its extension to be subject to such restrictions and modifications, if any, as he thinks fit.

Extension of enactments to cantonments.

Matters respecting which rules may be made.

24. The Governor General in Council may make rules consistent with this Act to provide for all or any of the following matters, namely :—

- (1) the manner in which, and the authority to which, application for permission to occupy land belonging to the Government in a cantonment is to be made ^(a) ;
- (2) the conditions to be annexed to every such permission given in pursuance of such an application ;
- (3) the preparation and maintenance of registers of immoveable property in cantonments ;
- (4) the constitution of cantonment committees, the functions to be discharged by them, the conduct of, and the control to be exercised over, their proceedings, and the division of duties among the members of such committees ;
- (5) the functions to be discharged by the commanding officer of a cantonment where a cantonment committee has not been constituted, or has in pursuance of an order of the Local Government ceased to exist, or for any reason cannot be convened ;
- (6) the executive duties of the Cantonment Magistrate and his position in relation to the commanding officer of the cantonment ;
- (7) the purposes to which the cantonment fund may be applied ;
- (8) the authority on which money may be paid from the cantonment fund ;
- (9) the investment of any balance of that fund ;
- (10) the execution of contracts by, or on behalf of, the cantonment authority ;
- (11) the accounts to be kept by the cantonment authority, and the manner in which those accounts are to be audited and published ;
- (12) the definition and abatement of nuisances for which sufficient provision has not, in the opinion of the Governor General in Council, been made under section 23 ;
- (13) the requisitions which may be made on persons having the control of sewers, drains, latrines or other things creating, or likely to create, nuisances, and the mode of enforcing such requisitions ^(b) ;

Case-law:—(a) To legalise conviction for encroachment by erecting building on public road, declaration of place being public with Cantonment Committee's sanction is essential before trial, Rat. Un. Cr. C. 505. (b) Where a conviction followed the summary rejection by the general commanding officer of a Cantonment of an appeal against a notice ordering the demolition, in the public interests of certain roofless walls of a building, the conviction was set aside, as the rejection of the appeal was illegal and as no option was given to the accused to repair or remove the building, 23 P.R. 1905, Cr. = 3 Cr. L.J. 301 ; common gaming house, meaning of, 3 Cr. L.J. 78 ; Rat. Un. Cr. C. 706 ; Cantonment Magistrate's power to order construction of privy and effect of failure to comply with, Rat. Un. Cr. C. 541.

- (14) the prevention of the overcrowding of buildings and places in a cantonment ;
- (15) the construction and maintenance, to the satisfaction of the cantonment authority, of buildings and of boundary-walls, hedges and other fences (a) ;
- (16) the regulation of the practice of agriculture and irrigation in a cantonment, the keeping of lands therein in proper order, and the felling, lopping and trimming of trees on such lands ;
- (17) the regulation of encamping-grounds, sarais, markets and slaughter houses, of traffic on roads and across unenclosed spaces under the control of the cantonment authority, and of processions and public assemblies (b) ;
- (18) the use and management of burial and burning grounds :
- (19) the supervision and the regulation of the use of public wells, tanks, rivers, streams, springs or other sources from which water is or may be made available for public use, and of the lands in the vicinity thereof (c) ;
- (20) the parts of a cantonment in which persons practising any profession or carrying on any trade, calling or occupation may be required to reside for the purpose of practising the profession or carrying on the trade, calling or occupation, and the conditions, if any, to be observed by such persons (d) ;
- (21) the prevention of the spread of infectious or contagious disorders within a cantonment, and the appointment and regulation of hospitals or other places within or without a cantonment for the reception and treatment of persons suffering from any disease (e) ;
- (22) the segregation in, or the removal and exclusion from, a cantonment, or the destruction of animals suffering or supposed to be suffering from any infectious or contagious disease ;

Case-law :—(a) Neglect to repair house if an offence, Rat. Un. Cr. C. 636 ; Courts, Civil and Criminal, not to interfere with discretion of Cantonment authorities to require repairs of buildings, except when exercised corruptly or maliciously, 19 P.R. 1904, Cr. ; validity of order to repair private house, 1 P.R. 1906, Cr. ; repairs not contemplated by Act, Failure to carry out, 7 O C. 68 ; notice not specifying nature and extent of repairs illegal, 56 P.L.R. 1912 ; temporary constructions if an offence, Rat. Un. Cr. C. 875. (b) Public place neither includes, place in open air between barrack wash-house and kitchen by side of path leading and visible from public road case of gambling, 1 P.R. 1873, Cr. ; nor Master's compound where servant is found drunk and riotous, A.W.N. (1887) 19 ; nor lock hospital, Rat. Un. Cr. C. 361 ; failure to pay rent for stall rented from cantonment authority no offence, 15 P.R. 1906, Cr. = 45 P.L.R. 1907 ; taking diseased cattle to public slaughter house, when an offence, Rat. Un. Cr. C. 471 ; whether use of public road may be totally forbidden, Rat. Un. Cr. C. 476 ; hackney carriage fee, failure to pay to cantonment authority if punishable, 22 P.L.R. 1907 ; beating of drum on public road held no offence, Rat. Un. Cr. C. 480. (c) Washing of clothes in tank, to become criminal must have been duly prohibited previously, 1 S.L.R. 92. (d) Prosecution for plying offensive trades to be proceeded by making declarations, if any, legally required to be made, Rat. Un. Cr. C. 54. (e) Failure to report case of cholera in disregard of Cantonment Magistrate's direction, if an offence, 9 P. R. 1895, Cr. ; 8 M. 428.

XLV of 1860.
44 and 45
Vict., c. 58.
V of 1898.

- (23) the suppression of mendicancy and of loitering or importuning for the purpose of prostitution, (a) and the removal and exclusion from a cantonment of disorderly persons, of persons who have been convicted of any offence against Chapter XVII of the Indian Penal Code, or section 156 of the Army Act, or have been ordered under the Code of Criminal Procedure, 1898, to execute a bond for their good behaviour, and of persons whom the commanding officer deems it expedient to exclude from the cantonment with or without assigning any reason for excluding them therefrom ;
- (24) the prevention of cruelty to animals and the care of animals while grazing ;
- (25) the prevention and extinction of fires ;
- (26) the registration of births and deaths ;
- (27) the appointment by owners of buildings and lands in cantonments, who are absent from cantonments, of persons residing within or near cantonments, to act as their agents for all or any of the purposes of this Act or any enactment extended or rule made thereunder (b) ;
- (28) the powers of inspection, entry and search which may be exercised in carrying out any of those purposes, and the cases in which breaches of enactments extended or rules made under this Act are to be cognizable offences ;
- (29) the mode in which summonses, notices, requisitions and other documents are to be served on the persons to whom they are addressed ; (c)
- (30) the cases, authorities and conditions in, to and on which executive orders passed under this Act or any enactment extended or rule made thereunder may be appealed from ; and
- (31) generally, the carrying out of the purposes of this Act.

25. (1) The power to make rules under section 24 is subject to the condition of the rules being made after previous publication and of their not taking effect until they have been published in the Gazette of India, and in such other manner as the Governor General in Council prescribes.

Supplemental provisions respecting rules.

Case-law :—(a) Arrest of unregistered prostitute held illegal, 25 P.R. 1870, Cr.; Magistrate's jurisdiction to try prostitute for carrying on trade without registration arises on complaint, not on police report, 2 P.R. 1895, Cr.; compulsory registration of unwilling party not carrying on prostitution and conviction for breach of rules held invalid, A.W.N. (1887) 219; owner not living in or controlling inmates of house let to prostitutes is no keeper of place of public resort, Rat. Un, Cr. O. 572. (b) Liability of master for offence committed by servant, 10 Bom. L.R. 1052. (c) Notice issued by Cantonment Magistrate on his own single authority without any reference to sub-committee of which he was a member, and in which authority was vested is *ultra vires*, 3 P.R. 1907, Cr.=5 Cr. L.J. 493=47 P.L.R. 1907; see, also, 3 S.L.R. 11; 4 A.L.J. 694; conviction for failure to remove remains of ruined building in pursuance of notice, where owner not given option of repairing it, 23 P.R. 1905, Cr.; notice not specifying nature and extent of repairs is illegal, 56 P.L.R. 1912.

(2) A rule under section 24 may be general for all cantonments in British India or for all cantonments not expressly excepted from its operation, or may be special for the whole or any part of any one or more than one cantonment, as the Governor General in Council directs.

(3) A copy of the rules for the time being in force in a cantonment shall be kept open to inspection free of charge at all reasonable times in the office of the Cantonment Magistrate^(a).

(4) In making any rule under clause (12) or any of the following clauses of section 24, the Governor General in Council may direct that a breach of it shall be punishable with fine ^(b) which may extend to fifty rupees, or with imprisonment for a term which may extend to eight days, and, when the breach is a continuing breach, with fine which, in addition to such fine or imprisonment as aforesaid, may extend to five rupees for every day after the first during which the breach continues.

26. The Local Government may, by notification in the official Gazette, and subject to any conditions as to compensation or otherwise which it may see fit to impose, extend to any area beyond the cantonment and in the vicinity thereof—

- (a) any enactment which, with or without restriction or modification, has been extended to the cantonment or any part thereof under section 23, or
- (b) any rule in force in the cantonment or any part thereof under clause (12) or any of the following clauses of section 24, as well as any direction there in force under sub-section (4) of section 25 ;

and the enactment, rule or direction specified in the notification shall, so long as the notification remains uncanceled, apply to that area as if the area were included in the cantonment.^(c)

27. Where a cantonment is situated within the limits of a Presidency-town, the functions assigned to any authority by this Act or any enactment extended or rule made thereunder shall, subject to the provisions of any enactment for the time being in force, be discharged by such authority as the Local Government may appoint in this behalf.

28. A suit or prosecution shall not be entertained ^(d) in any Court against any cantonment authority, authority appointed under section 27, Cantonment Magistrate or commanding, medical or other officer for anything in good faith done or purporting to be done in pursuance of powers conferred by or under this Act on such authority,

Extension of certain enactments and rules to places beyond cantonments.

Cantonments in Presidency-towns.

Protection of cantonment authority, Magistrate and commanding officer.

Case-law:—(a) Magistrates instituting prosecutions under Cantonment Code should inform accused of his right to have case tried by another Magistrate, as omission to do so will vitiate proceedings, 3 A.L.J. 694=A.W.N. (1906) 803=4 Cr. L.J. 374. (b) Order directing removal of structure erected without sanction within certain time or to pay daily fine in default improper, 12 Cr. L.J. 371=11 Ind. Cas. 139=206 P.L.R. 1911; 19 P.R. 1904, Cr.; cf. 7 B.H.C. Cr. 87; additional fine, where prescribed by rules, is to be imposed after first conviction and after proof of persistence, and not as threat to prevent possible persistence, 22 B. 766, 841. (c) Procedure for trial of offences committed beyond Cantonment limits, 12 P.R. 1870, Cr. (d) For case where officer commanding in cantonments held liable for not proceeding according to law, see 9 C. 341=9 I.A. 152 (P.C.).

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Magistrate or officer, whether the thing done was or was not authorised by the powers so conferred.

IV of 1882. **29.** (1) Section 54, paragraphs 2 and 3, and sections 59, 107 and 123 of the Transfer of Property Act, 1882, with respect to Registration. the transfer of property by registered instrument, shall, on and from the commencement of this Act, extend to every cantonment in British India.

XVI of 1908. (2) Where a cantonment has not been constituted a sub-district or district for the purposes of the Indian Registration Act, 1908, under section 9 of that Act, the Registrar of the district in which the cantonment is situated shall cause a copy of such entries in Indexes Nos. I and II as relate to immoveable property within the limits of the cantonment to be forwarded to the Cantonment Magistrate annually or at such shorter intervals as the Local Government may prescribe.

30. The Governor General in Council may, by notification in the Gazette of India, exclude from the operation of the whole or any part of this Act the whole or any part of any cantonment.
Limitation of the operation of this Act.

CHAPTER VI.

REPEALS AND SAVINGS.

Repeals.	31.	*	*	*	* [1]
Savings.	32.	All licenses and permits given under the Cantonments Act, 1889, or under any enactment repealed by that Act, and in force at the commencement of this Act, shall be deemed to have been given under this Act. ^(a)			
		*	*	*	* [2]

THE CANTONMENTS (HOUSE-ACCOMMODATION) ACT, 1902.

(ACT II OF 1902.)

[Passed on the 14th February, 1902.]

FOR HISTORICAL MEMOIR

see the CANTONMENTS ACT, 1910, *supra*.

Leg. Changes :—[1] Omitted by Act X of 1914. [2] Schedule omitted by Act X of 1914.

Case-law :—(a) Declaration made under repealed Act held valid, 16 B. 702; see, also, 1 S.L.R. 4.

S. 2 ACT II OF 1902 [CANT. (HOUSE-ACCOMN.)]. Cant. (Hou. Acc.)

An Act to make better provision for securing house-accommodation for military officers in cantonments.

WHEREAS various conditions, rules, regulations and orders have from time to time been laid down by, or by the authority of, the Government, in regard to the grant of land and the occupation of land and houses in cantonments, with the object of securing, amongst other things, that houses built on such land should be made available when required for the accommodation of military officers :

And whereas, notwithstanding the said conditions, rules, regulations and orders, difficulties have frequently been experienced in obtaining house-accommodation in cantonments for military officers, and it is expedient to make better provision for that purpose ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called the Cantonments (House-Accommodation) Act, 1902.

(2) It extends to the whole of British India (inclusive of British Baluchistan), except Aden ; and

(3) It shall come into force at once, but it shall not become operative in any cantonment or part of a cantonment until the issue, or otherwise than in pursuance, of a notification as hereinafter provided by section 3.

Definitions. 2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) "Cantonment Authority" means a Cantonment Committee, or, in the case of a cantonment for which such a Committee has not been constituted, or has ceased to exist, or cannot be convened, the Commanding Officer of the cantonment :

[1] (b) ["Division" means one of the Divisions into which the Army in India is, for the time being, divided, and includes the Bannu, Derajat and Kohat Independent Brigades :

(c) "Officer Commanding the Division" means the Officer Commanding a Division, and includes the officers commanding the Bannu, Derajat and Kohat Brigades :] [1]

(d) "house" means a house suitable for occupation by a military officer, and includes the land and buildings appurtenant to such house :

(e) "military officer" means a commissioned or warrant officer of His Majesty's regular forces on military duty in a cantonment, and includes a Chaplain, a Cantonment Magistrate and any person in Army departmental employment whom the [2] Officer Commanding the Division [2] may at any time, for

Leg. Changes :—[1] Clauses (b) and (c) were substituted by the Amending (Army) Act, V of 1909, S. 2 and Sch. [2] Substituted for the words "General Officer of the Command," *Ibid.*

the purposes of this Act, place on the same footing as a military officer :

- (f) "owner" includes the person who is receiving, or is entitled to receive, the rent of a house, whether on his own account or on behalf of himself and others or as an agent or trustee, or who would so receive the rent, or be entitled to receive it, if the house were let to a tenant : and
- (g) the expression "repairs" to a house includes such repairs as are usually made to houses in the neighbourhood, but does not include additions, improvements or alterations except in so far as they are necessary to carry out such repairs as aforesaid or have been made with the owner's consent.

(2) If any question arises whether any land or building is appurtenant to a house, it shall be decided by the Cantonment Magistrate, whose decision thereon shall, subject to revision by the District Magistrate, be final.

CHAPTER II.

APPLICATION OF ACT.

3. (1) The Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, declare this Act to be operative in any cantonment or part of a cantonment situate in the territories under its administration, other than a cantonment situate within the limits of a Presidency-town.
- Cantonments or parts of Cantonments, in which Act to be operative.

(2) Before issuing a notification under sub-section (1) in respect of any cantonment or part of a cantonment, the Local Government shall cause local inquiry to be made with a view to determining whether it is expedient to issue such notification and what portion (if any) of the area proposed to be included therein should be excluded therefrom.

4. Nothing in this Act shall affect the provisions of any written instrument executed by or on behalf of the East India Company or the Government, unless the other party entitled and the Secretary of State for India in Council consent in writing to be bound by the terms of this Act.
- Saving of written instruments.

CHAPTER III.

APPROPRIATION OF HOUSES FOR OCCUPATION BY MILITARY OFFICERS.

5. Every house situate in a cantonment or part of a cantonment in respect of which a notification under section 3, sub-section (1), is for the time being in force, shall be liable, subject to the provisions hereinafter contained, to appropriation at any time for occupation by a military officer.
- Liability of houses to appropriation for occupation by military officers.

Appropriation of house for military officer, where not already occupied by a military officer.

6. Where the Cantonment Authority, on application made to it as hereinafter provided by section 8 and subject to the requirements of that section, considers that the liability imposed by section 5 should be enforced on behalf of a military officer, it may, if the house is not already occupied by a military officer, by notice (a)—

- (a) require the owner to let the house to the military officer named in the notice, and
- (b) require the existing occupier (if any) to vacate the same.

Appropriation of house for regimental military officer, where already occupied by departmental military officer.

7. If a house is already occupied by a departmental military officer, and the Cantonment Authority, on application made to it as hereinafter provided by section 8 and subject to the requirements of that section, considers that the liability imposed by section 5 should be enforced on behalf of a regimental officer, or *vice versa*, it may, by notice, require the officer in occupation to vacate the house; and may, if necessary, by further notice require the owner to accept the change of tenancy.

8. (1) Where a military officer considers that a notice should be issued in his behalf under section 6 or section 7, as the case may be, he may request the Commanding Officer of his regiment, or (in the case of a departmental military officer) the local head of his department, to make an application to that effect to the Cantonment Authority.

(2) On receipt of an application made under sub-section (1), the Cantonment Authority shall inquire into the case, and it shall not issue the notice applied for unless it is satisfied—

- (a) that it is necessary or expedient for the military officer to reside in the cantonment, or, if this Act is in force in part of the cantonment only, then in that part;
- (b) that the circumstances are such as to require its intervention;
- (c) that the monthly rent proposed for the house is reasonable; and
- (d) that the house is suitable for the residence of the officer and, if it is occupied, that there is no vacant house in the cantonment or the said part of the cantonment, as the case may be, which is suitable for his residence.

Explanation I.—Where the rent of a house is registered in the office of the Cantonment Authority, the rent so registered shall be presumed, until the contrary is shown, to be the reasonable rent for the house.

Explanation II.—In considering whether a house is suitable for the residence of a military officer, regard shall be had to—

- (i) the locality in which his duties chiefly lie,
- (ii) his rank, and
- (iii) the number of persons dependent upon, and residing with, him.

Case-law :—(a) Civil Court competent to go into the question whether notice was properly given, 10 S.L.R. 113=37 Ind. Cas. 263.

9. Every notice to an owner issued under section 6 or section 7 shall state the amount of monthly rent proposed as reasonable for the house.

10. (1) No house in any cantonment or part of a cantonment in which this Act has been declared by a notification under section 3, sub-section (1), to be operative shall, unless it was so occupied at the date of such notification, be occupied for the purposes of a hospital, bank, hotel, shop or school, or by a railway administration, without the previous sanction of the [1] Officer Commanding the Division [1] given with the concurrence of the [2] Commissioner, or, in a Province where there are no Commissioners, of the Collector. [2]

(2) Before application is made for such sanction as aforesaid, the Commanding Officer of the cantonment shall certify whether or not in his opinion the number of houses in the cantonment, as compared with the strength of the existing or probable garrison, renders it likely that such occupation as aforesaid would—

- (a) cause any difficulty in obtaining accommodation in the cantonment, or in the part of the cantonment, in which the house is situate, for military officers, or
- (b) necessitate the acquisition of land at some future time for the extension of the cantonment.

Houses not to be appropriated for military officers in certain cases.

11. No notice shall be issued under section 6, if the house—

- (a) was occupied prior to the date of a notification under section 3, sub-section (1), declaring the Act to be operative in the cantonment, or part of the cantonment, or is occupied with the sanction required by section 10, as a hospital, bank, hotel, shop or school, and has been so occupied continuously during the three years immediately preceding the time when the occasion for issuing the notice arises, or
- (b) was occupied prior to the date of such a notification as is referred to in clause (a), or is occupied, with the sanction aforesaid, by a railway administration, or
- (c) is occupied by the owner, or
- (d) is appropriated by the Local Government, with the concurrence of the [1] Officer Commanding the Division [1] or by the Governor General in Council, for use as a public office or for any other purpose.

Time to be allowed for giving possession of house.

12. (1) If a house is unoccupied, a notice issued under section 6 may require the owner to give possession of the same to the proposed tenant within four days from the service of the notice.

Leg. Changes:—[1] Substituted for the words "General Officer of the Command" by the Amending (Army) Act, V of 1909, S. 2 and Sch. [2] Substituted for the words "Local Government" by Act IV of 1914.

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(2) If a house is occupied, a notice issued under section 6 or section 7 shall not require its vacation in less than thirty days from the service of the notice.

13. If the owner fails to give possession of a house to the proposed tenant in pursuance of a notice issued under section 6 or section 7, or if the existing occupier fails to vacate a house in pursuance of such a notice, the Cantonment Magistrate, by himself or by another person generally or specially authorized by him in this behalf, shall enter on the premises and enforce the surrender of the house.

Surrender of house when to be enforced.

Option in certain cases for owner on whom notice is issued under section 6 or section 7 to call upon the military officer concerned or the Government to purchase.

14. (1) If a house in respect of which a notice is issued under section 6 or section 7 is shown to the satisfaction of the Local Government, or is proved by a decree or order of a Court of competent jurisdiction to have been erected—

(a) under any conditions, rules, regulations or orders which were in force in Bengal prior to the eighth day of December, 1864, and conferred on the owner the option of offering the house for sale to the military officer applying for its appropriation for his occupation or to the East India Company or the Government, or

(b) under any conditions, rules, regulations or orders which were in force in Bombay prior to the first day of June, 1875, and conferred such an option as is described in clause (a),

then the owner shall have the option of either complying with the notice or offering the house for sale to the military officer in whose behalf the notice was issued, or to the Government.

(2) If the owner elects to sell the house, and such military officer or the Government is willing to purchase it, the amount of the purchase-money to be paid shall, in the event of disagreement, be determined by a Committee of Arbitration.

15. (1) If a house is occupied by a tenant holding in good faith and for valuable consideration under a registered lease for any term exceeding one year, or from year to year, no notice shall be issued under section 6 or section 7 without the previous sanction of the Officer Commanding the [1] Division.

Provision where tenant required to vacate holds under a long lease.

(2) If a house, in respect of which a notice is issued under section 6 or section 7, is occupied by a tenant holding in good faith and for valuable consideration under a registered lease for any term exceeding one year, the Secretary of State for India in Council shall, for the term of one year from the date on which the house is vacated in pursuance of the notice, or for the unexpired term of the lease, whichever is the shorter, be liable to the owner for the rent payable under this Act or, if no rent is so payable, for the rent fixed by the registered lease.

Leg. Changes:—[1] Substituted for the word "District" by the Amending (Army) Act, V of 1909, S. 2 and Sch.

(3) If a house, in respect of which a notice issued under section 6 or section 7, is occupied by a tenant holding in good faith and for valuable consideration under a registered lease from year to year, the Secretary of State for India in Council shall be liable as aforesaid for the term of six months from the date on which the house is vacated in pursuance of the notice.

(4) Nothing in this section shall be deemed—

(a) to render the said Secretary of State in Council so liable unless an application in writing in this behalf is made by the owner to the Cantonment Authority within fifteen days from the service of the notice ; or

(b) to limit or otherwise affect any agreement between the said Secretary of State in Council and the owner.

16. (1) Subject to the terms of any agreement in writing between an owner and a military officer, and to the provisions of this section, every lease of a house to such an officer shall be deemed to be a lease from month to month, terminable,—

Terms of tenancy applicable to military officers.

(a) without notice, in the case of a Committee of Arbitration deciding, as hereinafter provided, that the house has become unfit for occupation,

(b) by half a month's notice to the owner, in the case of the departure of the officer from the cantonment on duty or under medical certificate, and

(c) by one month's notice to the owner, in any other case.

(2) The Cantonment Magistrate shall, if the military officer so desires, cause the notice required by sub-section (1), clause (b) or clause (c), to be served on the owner.

(3) Where a military officer has, in pursuance of sub-section (1), clause (a), given up his occupation of a house without notice and has occupied the house during a portion only of the calendar month in which his occupation ceased, he shall be liable to pay as rent for that portion a sum bearing the same proportion to the monthly rent as the said portion bears to the whole month.

(4) Where a notice in respect of a house has been issued under section 6 or section 7 and the house has been vacated in pursuance thereof, the tenancy of the military officer in whose behalf the notice was issued, shall be deemed to have commenced on the date on which the house was vacated.

17. If the tenant of a house, being a military officer, sub-lets the same without the consent of the owner, the sub-lease shall be voidable at the option of the owner.

Sub-lease voidable at option of owner.

18. (1) If the owner considers that the rent stated in a notice in accordance with section 9 is not reasonable, he may, within a period of fifteen days from the service of such notice, require that the matter be referred by the Commanding Officer of the cantonment to a Committee of Arbitration.

Power for owner to require reference to arbitration on question of rent.

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(2) If the owner does not make such a requisition within the said period, he shall be deemed to have accepted the rent so offered.

(3) The rent fixed by a Committee of Arbitration or accepted by the owner under this section shall be deemed to be the rent payable by the military officer in whose behalf the notice was issued, as from the commencement of his tenancy, and the amount of such rent shall not be called in question by either party, except in the circumstances mentioned in section 21, clause (a).

19. (1) If the owner fails to execute any repairs to a house which the tenant, being a military officer, considers necessary, the Cantonment Authority may, at the request of the tenant and if it is satisfied that such repairs or any of them are necessary, by notice require the owner to execute such repairs, or such of them as it may consider necessary, within a period, not less than fifteen days, to be specified in the notice.

Power for owner to require reference to arbitration on question of repairs.

(2) If the owner objects to comply with a notice issued under sub-section (1), he may, within fifteen days from the service of the notice, require that the matter be referred by the Commanding Officer of the cantonment to a Committee of Arbitration.

Power for military tenant to require reference to arbitration on question whether house has become unfit for occupation.

20. If the tenant of a house, being a military officer, considers that his lease should be terminable without notice in consequence of the house having become unfit for occupation, he may require that the matter be referred by the Commanding Officer of the cantonment to a Committee of Arbitration.

Power for either owner or military tenant to require reference to arbitration on other questions.

21. If the owner and the tenant of a house, being a military officer, disagree—

- (a) as to any change in the rent of the house which is proposed in consequence of dilapidations or additions to buildings or for any other similar reason, or
- (b) on any matter relating to rent or repairs not otherwise provided for by this Act,

either the owner or the tenant may require that the matter be referred by the Commanding Officer of the cantonment to a Committee of Arbitration.

Power for military tenant to have repairs executed and recover cost.

22. Where—

- (a) the owner fails to comply with a notice issued under section 19, sub-section (1), and has not, within fifteen days from the service of such notice, required that the matter be referred to a Committee of Arbitration, or
- (b) a Committee of Arbitration decides that repairs are necessary and the extent to which they are necessary, and specifies the period within which they are to be executed, and the owner fails to execute them within such period,

the Military Works Services or the Public Works Department shall, on the application of the tenant of the house, being a military officer, cause the repairs specified in the notice or, if the matter has been referred to a Committee of Arbitration, in the decision of the Committee, to be executed at the expense of the tenant, and the tenant may deduct the cost thereof from the rent, or otherwise recover it from the owner.

23. Every person on whom devolves, by transfer, by succession or by operation of law, the interest of an owner in any house, or in any part of any house, situate in a cantonment or part of a cantonment in respect of which a notification under section 3, sub-section (1), is for the time being in force, shall be bound to give the Cantonment Magistrate notice of the fact within one month from the date of such devolution, and if he, without reasonable cause, fails to do so, shall be punishable with fine which may extend to fifty rupees.

Notice to be given of devolution of interest in house in cantonment.

CHAPTER IV.

COMMITTEES OF ARBITRATION.

24. In the event of any disagreement as to the amount of the purchase-money of a house to be sold under section 14, sub-section (2), the Cantonment Authority shall apply to the Commanding Officer of the cantonment to refer the matter to a Committee of Arbitration, and the Commanding Officer of the cantonment shall forthwith proceed to convene a Committee of Arbitration to determine it.

Convening of Committees of Arbitration in cases falling under section 14, sub-section (2).

25. Where a requisition is made to the Commanding Officer of the cantonment by an owner under section 18, section 19 or section 21, the Commanding Officer of the cantonment shall forthwith proceed to convene a Committee of Arbitration—

Convening of Committees of Arbitration on requisition of owners.

- (a) to determine the amount of monthly rent to be paid, or
- (b) to determine whether any, and (if any) what, repairs are necessary, the extent to which they are necessary, and the period within which they are to be executed, or
- (c) otherwise to determine the question in dispute.

26. (1) Where a requisition is made to the Commanding Officer of the cantonment by a military officer under section 20 or section 21, the Commanding Officer of the cantonment may, after such inquiry as he may think fit to make, proceed to convene a Committee of Arbitration—

Convening of Committees of Arbitration on requisition of military officers.

- (a) to determine whether the house has become unfit for occupation, or
- (b) to determine the amount of monthly rent to be paid, or
- (c) to determine whether any, and (if any) what, repairs are necessary, the extent to which they are necessary, and the period within which they are to be executed, or
- (d) otherwise to determine the question in dispute.

(2) In the exercise of the discretion vested in him by sub-section (1), the Commanding Officer of the cantonment may refuse to convene a Committee of Arbitration on the ground that the application therefor is groundless or frivolous.

Procedure for
convening Commit-
tees of Arbitration
generally.

27. (1) Where a Committee of Arbitration is to be convened, the Commanding Officer of the cantonment shall forthwith cause an order to be published in Station Orders, stating the matter to be determined.

(2) The Cantonment Magistrate shall forthwith send a copy of such order to the District Magistrate and to the parties concerned, and shall forthwith by notice require the parties to nominate members of the Committee in accordance with the provisions of sections 28 and 29.

Constitution
of Committees of
Arbitration.

28. Every Committee of Arbitration shall consist of—

(a) a chairman, who shall be the District Magistrate, or, if the District Magistrate is unable to act on the Committee, some Magistrate, being a Justice of the Peace or Magistrate of the first class, and not being the Cantonment Magistrate, appointed by the District Magistrate to act in his stead ;

(b) a member to be nominated by the military officer concerned ,
and

(c) a member to be nominated by the owner concerned :

Provided that, if the military officer and the owner, at any time before the meeting of the Committee, join in nominating, by notice to the Cantonment Magistrate, any other person as chairman, such person shall be the chairman instead of the District Magistrate or the Magistrate (if any) appointed by the District Magistrate under clause (a) ; and

Provided, also, that,—

(i) if the officer or the owner fails, without reasonable cause, to nominate a member within seven days from the date on which he may be called upon to do so, or,

(ii) if any member, who has been nominated, neglects or refuses to act, and the officer or the owner, as the case may be, fails to nominate another member in his place within seven days from the date on which he is called upon to do so,

the District Magistrate shall forthwith appoint a member in the place of the nominee of the officer or owner, as the case may be.

Members of Com-
mittees of Arbitra-
tion to be persons
who have no direct
interest and whose
services are immedi-
ately available.

29. (1) No person who has a direct interest in the matter under reference or whose services are not immediately available for the purposes of the Committee, shall be nominated or appointed a member of a Committee of Arbitration.

(2) If any person who has been nominated has, in the opinion of the District Magistrate, a direct interest in the matter under reference, or if his services are not immediately available as aforesaid, and if the officer or the owner, as the case may be, fails to nominate another member in his place within seven days from the date on which he is called on so to

do, such failure shall be deemed to constitute a failure to make a nomination within the meaning of section 28.

30. (1) When a Committee of Arbitration has been duly constituted, Meetings and the Cantonment Magistrate shall by notice inform each powers of Committees of Arbitration. of the members of the fact, and the Committee shall meet as soon as may be thereafter.

(2) The Committee shall have power to receive evidence and to administer oaths to witnesses, and the Cantonment Magistrate shall issue the necessary processes for the attendance of witnesses and the production of documents required by the Committee, and may enforce the said processes as if they were processes for attendance or production before himself.

31. The chairman of the Committee of Arbitration shall fix the time and place of meeting, and shall have power to adjourn the meeting from time to time as may be necessary.

32. In determining the amount of the purchase-money to be paid for a house to be sold under section 14, sub-section (2), the Calculation of amount of purchase-money by Committees of Arbitration. Committee of Arbitration convened under section 24 shall estimate the market-value of the house at the date on which the notice was served on the owner under section 6 or section 7, as the case may be.

33. Subject to the presumption mentioned in the first explanation to section 8, in determining the amount of monthly rent to be paid for a house, the Committee of Arbitration shall estimate the letting-value of the house, and shall have regard to, amongst other things, the circumstances of the neighbourhood and the period of time and season for which the house is likely to be occupied during the year.

34. (1) The decision of every Committee of Arbitration shall be in accordance with the majority of votes taken at a meeting at which the chairman and at least one of the other members are present.

(2) If there is not a majority of votes in favour of any proposed decision, the opinion of the chairman shall prevail.

(3) The decision of a Committee of Arbitration shall be final.

CHAPTER V.

APPEALS.

35. (1) If any owner or any tenant of a house is Appeal when aggrieved by a notice (a) issued under section 6 or allowed. section 7, he may appeal to the [1] Officer Commanding the Division.[1]

(2) No such appeal shall be admitted unless made within a period of twenty-one days from the service of the notice aforesaid, and such period

Leg. Changes :—[1] Substituted by the Amending (Army) Act, V of 1909, S. 2 and Sch.

Case-law :—(a) Civil Court competent to determine legality of, 10 S.L.R. 113=37 Ind. Cas. 267.

S. 39 ACT II OF 1902 [CANT. (HOUSE-ACCOMN.)]. Cant. (Hou. Acc.)

shall be computed in accordance with the provisions of the Indian Limitation Act, 1877, with respect to the computation of periods of limitation XV of 1877. thereunder.

36. (1) Every petition of appeal shall be in writing and accompanied by a copy of the notice appealed against.

(2) Any such petition may be presented to the Cantonment Authority; and that Authority shall be bound to forward it to the [1] Officer Commanding the Division, [1] and may attach thereto any report which it may desire to make in explanation of the notice appealed against.

(3) If any such petition is presented direct to the [1] Officer Commanding the Division [1] and an immediate order on the petition is not necessary, the [1] Officer Commanding the Division [1] may refer the petition to the Cantonment Authority for report.

37. The decision of the [1] Officer Commanding the Division [1] on any such appeal shall be final:

Provided that no appeal shall be decided until the appellant has been heard or has had a reasonable opportunity of being heard.

38. Where an appeal from a notice has been presented within the period prescribed by section 35, sub-section (2), all action on such notice shall, on the application of the appellant, be held in abeyance pending the decision of the appeal.

Suspension of
action pending
appeal.

CHAPTER VI.

SUPPLEMENTAL PROVISIONS.

39. (1) If a military officer is given possession of a house in pursuance of a notice issued under section 6 or section 7, the rent payable by such officer under this Act shall be registered by the Cantonment Authority in a register to be maintained in such form as the Local Government may, by rule, prescribe.

Recovery of rents
from military ten-
ants in cantonments.

(2) If such officer fails, before the fifteenth day of any month, to pay the rent so registered and due from him in respect of the month immediately preceding, the Cantonment Authority, if so satisfied, shall, on the application of the owner made before the end of the latter month, report the matter, through the proper channel, to the Officer Commanding the [2] Division.

(3) The Officer Commanding the [2] Division may, if he is satisfied that the amount claimed is still due, order that it be withheld from the salary and allowances of the defaulting officer, and, upon notice of the order to the officer whose duty it is to disburse such salary and allowances, such disbursing officer shall, unless such salary and allowances are under attachment by order of a Civil Court, withhold and remit to the Cantonment Authority, for payment to the owner, the amount specified in the order.

Leg. Changes:—[1] Substituted by the Amending (Army) Act, V of 1909, S. 2 and Sch. [2] Substituted for the word "District" by the Amending (Army) Act, V of 1909, S. 2 and Sch.

(4) If, within two months from the date of an application made by the owner under sub-section (2), on which the Officer Commanding the [4] Division has made an order under sub-section (3), the amount of the rent in respect of which such application and order were made is not paid to the owner, the Cantonment Magistrate shall, on the application of the owner, require the defaulting officer to vacate the house within four days, and, if such officer fails to do so, the Cantonment Magistrate shall, by himself or by another person generally or specially authorized by him in this behalf, enter on the premises and enforce the surrender of the house.

40. Every notice or requisition prescribed by this Act shall be in writing, signed by the person by whom it is given or made or by his duly appointed agent, and may be served by post on the person to whom it is addressed, or, in the case of an owner who is absent from the cantonment, on his agent appointed under section 226 of the Cantonment Code, 1899.

41. (1) The Governor General in Council may make rules to carry out the purposes and objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) regulate the procedure of Committees of Arbitration ; and

(b) define the powers of inspection and entry which may be exercised in carrying out the purposes and objects of this Act or of any rule thereunder.

42. (1) The power to make rules under section 41 shall be subject to the condition of the rules being made after previous publication and of their not taking effect until they have been published in the Gazette of India and in such other manner (if any) as the Governor General in Council may direct.

(2) Any rule under section 41 may be general for all cantonments or parts of cantonments in British India in which this Act is for the time being operative, or may be special for any of such cantonments or parts, as the Governor General in Council may direct.

(3) A copy of the rules under section 41 for the time being in force in a cantonment shall be kept open to inspection free of charge at all reasonable times in the office of the Cantonment Authority.

(4) In making any rule under section 41, sub-section (2), clause (b), the Governor General in Council may direct that whoever obstructs any person, not being a public servant within the meaning of section 21 of the Indian Penal Code, in making any inspection or entry, shall be punishable with fine which may extend to fifty rupees, and in the case of a continuing offence, with fine which, in addition to such fine as aforesaid, may extend to five rupees for every day after the first during which such offence continues.

Leg. Changes :—[4] Substituted for the word "District" by the Amending (Army) Act, V of 1909, S. 2 and Sch.

43. No Judge or Magistrate shall be deemed, within the meaning of section 556 of the Code of Criminal Procedure, 1898, V of 1898.

Inapplicability of section 556 of the Code of Criminal Procedure, 1898, to trials of offences against rules,

to be a party to, or personally interested in (a) any prosecution for an offence against any rule under this Act merely because he is a member of the Cantonment Committee or has ordered or approved the prosecution. (b)

Protection to persons acting under Act.

44. No suit or other legal proceeding shall lie against any person for anything done, or in good faith intended to be done, under this Act or in pursuance of any lawful notice or order issued under this Act.

THE CATTLE-TRESPASS ACT, 1871.

(ACT I OF 1871.)

[Passed on the 13th January, 1871.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1856	IV	Cattle-Killing	... Rep., Act XVII of 1862.
1857	III	Cattle-Trespass	... Rep., Act I of 1871.
1860	V	Do.	Do.
1861	XXII	Do.	Do.
1871	I	Do.	... Am., Act XVIII of 1883. Am., Act I of 1891. Am., Act X of 1914.

An Act to consolidate and amend the law relating to Trespasses by Cattle.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to trespasses by cattle;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Title and extent.

[1] 1. (1) This Act may be called the Cattle-Trespass Act, 1871; and

(2) It extends to the whole of British India except the Presidency-towns and such local areas as the Local Government, by notification in the official Gazette, may from time to time exclude from its operation.

(3) [2] * * * * *

Leg. Changes :—[1] This section was substituted for the original S. 1 by Act I of 1891, S. 1. [2] Repealed by Act X of 1914.

Case-law :—(a) See 43 P.R. 1888, Cr.; 48 P.R. 1887, Cr.; and 40 P.R. 1884, Cr. (b) Conviction bad where Magistrate, who took cognisance of offence on his own personal knowledge, did not inform accused of his right to be tried by another Magistrate and did not take independent evidence, 8 P.R. 1905, Cr.=2 Cr. L.J. 45.

Repeal of Acts. 2. The Acts mentioned in the schedule hereto annexed are repealed.

References to repealed Acts. References to any of the said Acts in Acts passed subsequently thereto shall be read as if made to this Act.

All pounds established, pound-keepers appointed and villages determined under Act No. III of 1857 ^(a) (*relating to trespasses by cattle*), shall be deemed to be respectively established, appointed and determined under this Act.

Interpretation clause. 3. In this Act:—

" officer of police " includes also village-watchman and

" cattle " includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, and kids, [1] and

" local authority " means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area, and

" local fund " means any fund under the control or management of a local authority.][1]

CHAPTER II.

POUNDS AND POUND-KEEPERS.

Establishment of pounds. 4. Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the Local Government, from time to time directs.

The village by which every pound is to be used shall be determined by the Magistrate of the District.

Control of pounds, Rates of charge for feeding impounded cattle. 5. The pounds shall be under the control of the Magistrate of the District; and he shall fix, and may from time to time alter, the rates of charge for feeding and watering impounded cattle.

Appointment of pound-keepers. 6. The Magistrate of the District shall also appoint for each pound a pound-keeper :

Ex officio pound-keepers in Madras and Bombay. Provided that, in the Presidency of Fort St. George, the heads of villages and, in the Presidency of Bombay, the police patils or (where there are no police patils) the heads of villages, shall be *ex officio* the keepers of village-pounds.

Suspension or removal of pound-keepers. Every pound-keeper appointed by the Magistrate of the District may be suspended or removed by such Magistrate.

Leg. Changes :—[1] These words were added to S. 3 by Act I of 1891, S. 2.

Case-law :—(a) Case where conviction under this repealed Act was upheld, 16 W. R. Cr. 12.

**P o u n d-keepers
m a y hold other
offices.**

Any pound-keeper may hold simultaneously any other office under Government.

**Pound-keepers to
be "public servants."**

Every pound-keeper shall be deemed a public servant within the meaning of the Indian Penal Code. XLV of 1860.

Duties of Pound-keepers.

**To keep registers
and furnish returns.**

7. Every pound-keeper shall keep such registers and furnish such returns as the Local Government from time to time directs.

**To register sei-
zures.**

8. When cattle are brought to a pound, the pound-keeper shall enter in his register—

- (a) the number and description of the animals,
- (b) the day and hour on and at which they were so brought,
- (c) the name and residence of the seizer, and
- (d) the name and residence of the owner, if known,

and shall give the seizer or his agent a copy of the entry.

**To take charge
of and feed cattle.**

9. The pound-keeper shall take charge of, feed and water the cattle until they are disposed of as hereinafter directed.

CHAPTER III.

IMPOUNDING CATTLE.

**Cattle damaging
land.**

10. The cultivator or occupier of any land (a), or any person who has advanced cash for the cultivation of the crop or produce on any land,

or the vendee or mortgagee of such crop or produce, or any part thereof,

may seize (aa) or cause to be seized any cattle trespassing on such land and doing damage (b) thereto or to any crop or produce thereon, and [1] send them or cause them to be sent within twenty-four hours [1] to the pound established for the village in which the land is situate.

**Police to aid
seizures.**

All officers of police shall, when required, aid in preventing (a) resistance to such seizures. and (b) rescues from persons making such seizures.

**Cattle damaging
public roads, canals
and embankments.**

11. Persons in charge of public roads, pleasure grounds, plantations, canals, drainage-works, embankments and the like (c), and officers of police may seize, or cause to be seized, any cattle doing damage(d) to such roads, grounds, plantations, canals, drainage-works, embankments, and

Leg. Changes:—[1] These words were substituted for the words "take them or cause them to be taken without unnecessary delay" by Act I of 1891, S. 3.

Case-law:—(a) A person in exclusive possession of a piece of land is the occupier of the land within the meaning of this section irrespective of the question of title, 3 P.R. 1916 (Cr.)=32 Ind. Cas. 655=17 Cr. L.J. 63. (aa) Who may seize cattle, 9 C. W.N. 624; seizure of cattle by watchman or servant legal, 16 Cr. L.J. 772=31 Ind. Cas. 372; regarding the legality of seizure of cattle to coerce owner to pay rent, see 18 Cr. L.J. 849=41 Ind. Cas. 817; difference between S. 425, Penal Code and this section, 29 A. 565; 7 B. 126; 9 B. 173; 1 Weir 492. (b) Cattle may be seized only when actually trespassing and causing damage, 1 Weir 709. (c) Public Works Department officers cannot seize cattle unless they were trespassing on public property in charge of such officers, 24 M. 318. (d) Which need not actually be done where cattle stray into reserved forest, 22 B. 993; Rat. Un Cr. C. 602.

the like, or the sides or slopes of such roads, canals, drainage-works or embankments, or found straying thereon,

and shall [1] send them or cause them to be sent within twenty-four hours [1] to the nearest pound.

12. For every head of cattle impounded as aforesaid, the pound-keeper shall levy a fine (a) according to the following scale :—

Fines for cattle
impounded.

Elephant	...	...	...	two rupees.
Camel or buffalo	...	...	...	eight annas.
Horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow or heifer	...	...	...	four „
Calf, ass or pig	...	...	...	two „
Ram, ewe, sheep, lamb, goat or kid	...	...	...	one anna.

[2] Provided that when it appears to the Local Government from the report of a Magistrate of a District, or on the representation of a local authority, that, in any local area subject to the jurisdiction or control of such Magistrate or authority, cattle are habitually allowed to trespass on land and damage crops or other produce thereon, the Local Government may, by notification in the official Gazette, direct that, for every head of cattle of any kind specified therein which may be seized within such local area and impounded as aforesaid, the pound-keeper shall levy such fine, not exceeding double the fine mentioned in the foregoing scale, as may be prescribed in the notification.

All fines so levied shall be sent to the Magistrate of the District through such officer as the Local Government from time to time directs.

A list of the fines and of the rates of charge for feeding and watering cattle shall be stuck up in a conspicuous place on or near to every pound.

List of fines and
charges for feeding.

[3] The Local Government may at any time, by notification in the official Gazette, cancel or vary a notification under the proviso to the first paragraph of this section.

CHAPTER IV.

DELIVERY OR SALE OF CATTLE.

13. If the owner of the impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

The owner or his agent, on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper.

Leg. Changes:—[1] These words were substituted for the words "take them without unnecessary delay" by Act I of 1891, S. 4 [2] This proviso was added by Act I of 1891, S. 5 (1). [3] This paragraph was added by Act I of 1891, S. 5 (2).

Case-law:—(a) Fine under section does not exempt owner from punishment, 7 B. H. C. Cr. 55.

14. If the cattle be not claimed within seven days from the date of their being impounded, the pound-keeper shall report the fact to the officer in charge of the nearest police-station, or to such other officer as the Magistrate of the District appoints in this behalf.

Procedure if cattle be not claimed within a week.

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating—

- (a) the number and description of the cattle,
- (b) the place where they were seized,
- (c) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market-place nearest to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer or an officer of his establishment deputed for that purpose, at such place and time and subject to such conditions as the Magistrate of the District by general or special order from time to time directs :

Provided that, if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit.

15. If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal and that the owner is about to make a complaint under section 20, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

Delivery to owner disputing legality of seizure, but making deposit.

16. If the owner or his agent appear and refuse or omit to pay or (in the case mentioned in section 15) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer, at such place and time and subject to such conditions, as are referred to in section 14.

Procedure when owner refuses or omits to pay the fines and expenses.

The fines leviable and the expenses of feeding and watering, together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

Deduction of fines and expenses.

The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account showing—

Delivery of unsold cattle and balance of proceeds.

- (a) the number of cattle seized,
- (b) the time during which they have been impounded,
- (c) the amount of fines and charges incurred,
- (d) the number of cattle sold,
- (e) the proceeds of sale, and
- (f) the manner in which those proceeds have been disposed of.

The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase-money (if any) paid to him according to such account.

Receipt.

Disposal of fines, expenses and surplus proceeds of sale.

17. The officer by whom the sale was made shall send to the Magistrate of the District the fines so deducted.

The charges for feeding and watering deducted under section 16 shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section 13.

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months, and, if no claim thereto be preferred and established within that period, shall, at its expiry, dispose of them as hereinafter provided.

Application of fines and unclaimed proceeds of sale.

18. Out of the sums received on account of fines and the unclaimed proceeds of the sale of cattle shall be paid—

- (a) the salaries allowed to pound-keepers under the orders of the Local Government ;
- (b) the expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act ;

and the surplus (if any) shall be applied, under orders of the Local Government, to the construction and repair of roads and bridges and to other purposes of public utility.

Officers and pound-keepers not to purchase cattle at sales under Act.

19. No officer of police, or other officer or pound-keeper appointed under the provisions herein contained, shall, directly or indirectly, purchase any cattle at a sale under this Act. (a)

Pound-keepers when not to release impounded cattle.

No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this Chapter, unless such release or delivery is ordered by a Magistrate or Civil Court.

CHAPTER V.†

COMPLAINTS OF ILLEGAL SEIZURE OR DETENTION.

20. Any person whose cattle have been seized under this Act, or, having been so seized, have been detained in contravention of this Act, may, at any time within ten days from the date of the seizure, make a complaint (b) to the Magistrate of the District (c) or any Magistrate (d) authorized to receive and try (e) charges without reference by the Magistrate of the District.

Leg. Changes :—[1] This Chapter was substituted for the original Chapter V, by Act I of 1891, S. 6.

Case-law :—(a) Purchase by Police Sub-Inspector paying almost approximate value of animal, but not at public sale, held no offence under S. 405, Penal Code, 8 B.L.R. App. 1. (b) Illegal seizure of cattle is now an offence under the Crim. Pro. Code, 1898, S. 4 (o), 34 C. 926 ; 39 M. 517 and 4 L.B.R. 11 = 6 Cr. L.J. 122 ; suit for compensation will lie for wrongful seizure, 16 C. 519. (c) District Magistrate may transfer case under S. 192 (1), Crim. Pro. Code, after taking cognizance of it to any Subordinate Magistrate, 34 C. 926. (d) May try offence on transfer to him, 34 C. 926. (e) Cattle lifting being serious offence is not summarily triable, 6 S.L.R. 101.

21. The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances.^(a) It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

Procedure on complaint.

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an enquiry ^(b) into the case.

22. If the seizure or detention be adjudged illegal, ^(c) the Magistrate shall award to the complainant, for the loss caused by the seizure or detention, reasonable compensation,^(d) not exceeding one hundred rupees, to be paid by the person who made the seizure or detained the cattle, together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle ;

Compensation for illegal seizure or detention.

and, if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle.

Release of cattle.

23. The compensation, fines and expenses mentioned in section 22 may be recovered as if they were fines imposed by the Magistrate.^(e)

Recovery of compensation.

CHAPTER VI.

PENALTIES.

24. Whoever forcibly opposes the seizure of cattle liable to be seized^(f) under this Act,

Penalty for forcibly opposing the seizure of cattle or rescuing the same.

and whoever rescues the same after seizure, either from a pound or from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act,

shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

Case-law :—(a) Where cattle of one person are in another's custody from which they are seized, owner, if not personally acquainted with circumstances, cannot institute complaint, 5 Bom. L.R. 205. (b) Ownership of land may be inquired into by Magistrate, if necessary, 23 W R. Cr. 2. (c) Illegal seizure and theft to be distinguished, 22 C. 139 ; proceedings are *quasi civil*, 14 C. 175 ; conviction of Municipal servants for impounding cattle without justification held to be legal, 16 A.L.J. 148. (d) Includes also Court and process fees necessarily paid on account of refusal to make compensation or refund fine paid, 7 M. 345 (346) ; complainant to be entitled should make specific claim for it, 4 L.B.R. 11 = 6 Cr. L.J. 122 ; sufficiency of compensation where some compensation awarded, will not be considered, 1 Weir 715 ; only compensation to be awarded, not fine, 27 O. 992 ; nor imprisonment in default of fine, 22 C. 139 ; 19 M. 238 ; 31 M. 139 ; appeal lies against grant of compensation, 29 M. 517, where compensation under Crim. Pro. Code, S. 250, and this section distinguished. (e) See 22 C. 139 ; L.B.R. (1872—1892) 429 and 515. (f) Essence of offence under this section, 24 M. 318 ; 4 P.R. 1891, Cr. ; Rat. Un. Cr. C. 294.

25. Any fine imposed [1] under the next following section or [1] for the offence of mischief by causing cattle to trespass on any land may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

Recovery of penalty for mischief committed by causing cattle to trespass.

26. Any owner or keeper of pigs (a) who, through neglect (b) or otherwise, damages or causes or permits to be damaged any land, or any crop or produce of land, or any public road, by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished (c) with fine not exceeding ten rupees.

Penalty for damage caused to land or crops or public roads by pigs.

[2] The Local Government, by notification in the official Gazette, may from time to time, with respect to any local area specified in the notification, direct that the foregoing portion of this section shall be read as if it had reference to cattle generally, (d) or to cattle of a kind described in the notification, instead of to pigs only, or as if the words "fifty rupees" (d) were substituted for the words "ten rupees," or as if there were both such reference and such substitution.

[3] * * * * *

27. Any pound-keeper (e) releasing or purchasing or delivering cattle contrary to the provisions of section 19 or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties (f) imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Penalty on pound-keeper failing to perform duties.

Such fines may be recovered by deductions from the pound-keeper's salary.

28. All fines recovered under section 25, section 26 or section 27 may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

Application of fines recovered under section 25, 26 or 27.

Leg. Changes :—[1] These words were inserted by Act I of 1891, S. 7. [2] These paragraphs were added by Act I of 1891, S. 8. [3] The words "The Local Government....under this section" were repealed by Act X of 1914.

Case-law :—(a) In case of other animals—buffaloes—intention to cause damage or knowledge of its likelihood is essential, Rat. Un. Cr. C. 60. (b) Personal neglect on owner's part and his suffering his cattle to trespass must either be inferrible or shown affirmatively to exist, Rat. Un. Cr. C. 867. (c) Maximum sentence bad where clear evidence of damage wanting, 2 Bom. L. R. 335. (d) Both these options have been availed of in the Madras Presidency, viz., in portions of Nilgiri district; in Wynad taluk, in Malabar district; in Kodaikanal; in Deputy Tahsildar's division of Yercaud in Salem district; and in certain paduagais of Salem district. (e) Does not include person merely entertained by police patel, who is *ex officio* pound-keeper to look after and water impounded cattle, 9 B.E.C. 164. (f) Pound-keeper giving receipt for, and entering in accounts less amount than received, but altering accounts and entries in conformity with fact before amount paid into treasury not punishable, Rat. Un. Cr. C. 632.

CHAPTER VII.

SUITS FOR COMPENSATION.

Saving of right to
sue for compensa-
tion.

29. Nothing herein contained prohibits^(a) any person whose crops or other produce of land have been damaged by trespass of cattle from suing for compensation in any competent Court.

30. Any compensation paid to such person under this Act by order of the convicting Magistrate shall be set-off and deducted from any sum claimed by or awarded to him as compensation in such suit.

CHAPTER VIII. [1]

SUPPLEMENTAL.

Power for Local
Government to
transfer certain
functions to local
authority and direct
credit of surplus
receipts to local
funds.

31. The Local Government may, from time to time, by notification in the official Gazette,—

- (a) transfer to any local authority within any part of the territories under its administration in which this Act is in operation, all or any of the functions of the Local Government or the Magistrate of the District under this Act, within the local area subject to the jurisdiction of the local authority, or
- (b) direct that the whole or any part of the surplus accruing in any district under section 18 of this Act shall be placed to the credit of such local fund or funds as may be formed for any local area or local areas comprised in that district.

[2]

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SCHEDULE.

(See section 2.)

Number and year.	Title of Act.
III of 1857 ...	An Act relating to trespasses by cattle.
V of 1860 ...	An Act to amend Act III of 1857 (relating to trespasses by cattle).
XXII of 1861 ...	An Act to amend Act III of 1857 (relating to trespasses by cattle).

Leg. Changes :—[1] Chapter VIII was added by Act I of 1891, S. 9. [2] The words “and may, from time to time,.....under this section” are repealed by Act X of 1914.

Case-law :—(a) See 16 C. 159 and 92 F.R. 1877.

THE CHRISTIAN MARRIAGE ACT, 1872.

See MARRIAGE (CHRISTIAN) ACT, 1872, infra.

THE CINEMATOGRAPH ACT, 1918.

(ACT II OF 1918.)

[Passed on the 6th March, 1918]

An Act to make provision for regulating exhibitions by means of Cinematographs.

WHEREAS it is expedient to make provision for regulating exhibitions by means of cinematographs ; It is hereby enacted as follows :—

Short title, extent and commencement. 1. (1) This Act may be called the Cinematograph Act, 1918.

(2) It extends to the whole of British India, including British Baluchistan.

(3) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, direct.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

"Cinematograph" includes any apparatus for the representation of moving pictures or series of pictures ;

"Place" includes also a house, building, tent or vessel ; and

"Prescribed" means prescribed by rules made under this Act.

3. Save as otherwise provided in this Act, no person shall give an exhibition by means of a cinematograph elsewhere than in a place licensed under this Act, or otherwise than in compliance with any conditions and restrictions imposed by such license.

Cinematograph exhibitions to be licensed.

4. The authority having power to grant licenses under this Act (hereinafter referred to as the "licensing authority") shall be the District Magistrate, or, in a Presidency-town or in the town of Rangoon, the Commissioner of Police :

Licensing authority.

Provided that the Local Government may, by notification in the local official Gazette, constitute for the whole or any part of a Province such other authority as it may specify in the notification to be the licensing authority for the purposes of this Act.

Restrictions on powers of licensing authority. 5. (1) The licensing authority shall not grant a license under this Act, unless it is satisfied that—

(a) the rules made under the Act have been substantially complied with ; and

(b) adequate precautions have been taken in the place in respect of which the license is to be given to provide for the safety of persons attending exhibitions therein.

(2) A condition shall be inserted in every license that the licensee will not exhibit, or permit to be exhibited, in such place any film other than a film which has been certified as suitable for public exhibition by the prescribed authority, and which, when exhibited, displays the prescribed mark of that authority, and has not been altered or tampered with in any way since such mark was affixed thereto.

(3) Subject to the foregoing provisions of this section, and to the control of the Local Government, the licensing authority may grant licenses under this Act to such persons as it thinks fit, and on such terms and conditions and subject to such restrictions as it may determine.

6. (1) If the owner or person in charge of a cinematograph uses the same or allows it to be used, or if the owner or occupier of any place permits that place to be used, in contravention of the provisions of this Act or the rules made thereunder, or of the conditions and restrictions upon, or subject to which, any license has been granted under this Act, he shall be punishable with fine which may extend to one thousand rupees and, in the case of a continuing offence, with a further fine which may extend to one hundred rupees for each day during which the offence continues, and his license (if any) shall be liable to be revoked by the licensing authority.

(2) If any person is convicted of an offence punishable under this Act committed by him in respect of any film, the convicting Court may further direct that the film shall be forfeited to His Majesty.

7. (1) The Governor General in Council shall, by notification in the Gazette of India, constitute as many authorities as he may think fit for the purposes of examining and certifying films as suitable for public exhibition. The certificate of any such authority shall be valid in such area as may be specified in the notification.

(2) If any such authority after examination considers that a film is suitable for public exhibition, it shall cause the film to be marked in the prescribed manner.

(3) If the authority is of opinion that a film is not suitable for public exhibition, it shall inform the person applying for the certificate of its decision, and such person may, within thirty days from the date of such decision, appeal for a reconsideration of the matter by the Local Government, whose decision shall be final.

(4) Where the area for which a certificate has been granted includes territory in more than one Province, the appeal shall lie to such Local Government as may be specified in that behalf in the notification under which the certifying authority is constituted.

(5) The District Magistrate, or, in a Presidency-town or in the town of Rangoon, the Commissioner of Police, may, after recording his

reasons in writing, by order suspend the certificate of any film pending the orders of the Local Government, and during such suspension the film shall be deemed to be an uncertified film in that district or town. He shall forthwith forward a copy of his order to the Local Government to which he is subordinate, and such Local Government may, in its discretion, either discharge his order or, by notification in the local official Gazette, direct that the film shall be deemed to be an uncertified film in the whole or any part of the Province.

(6) The Local Government may, of its own motion, by notification in the local official Gazette, direct that a film covered by a certificate valid in the Province shall be deemed to be an uncertified film in the whole or any part of the Province.

(7) The exhibition of a film to which any order or direction under sub-section (5) or (6) is for the time being applicable shall, in the area to which such order or direction relates, be deemed to be a contravention of the condition mentioned in section 5 (2).

8. (1) The Governor General in Council may make rules for the purpose of carrying into effect the provisions of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, rules under this section may provide for—

- (a) the regulation of cinematograph exhibitions for securing the public safety ;
- (b) the procedure of the authorities constituted for examining and certifying films as suitable for public exhibition, and all matters ancillary thereto, and the fees to be levied by those authorities ; and
- (c) any other matter which by this Act is to be prescribed.

(3) The Governor General in Council may delegate to a Local Government the power to make rules regarding the matters mentioned in sub-section (2) (a) so far as regards the territories subject to that Government.

(4) All rules made under this Act shall be published in the Gazette of India, or the local official Gazette, as the case may be, and, on such publication, shall have effect as if enacted in this Act.

9. The Local Government may, by order in writing, exempt, subject to such conditions and restrictions as it may impose, any cinematograph exhibition or class of cinematograph exhibitions from any of the provisions of this Act or of any rule made thereunder.

Power to exempt.

THE INDIAN COMPANIES ACT, 1913.

(ACT VII OF 1913.)

[Passed on the 27th March, 1913.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1850	XLIII	Joint Stock Companies Act ...	Rep., Act X of 1866, S. 219.
1857	XIX	Do. ...	Rep. in part, Act X of 1866.
1860	VII	Joint Stock Banks Act ...	Rep., Act X of 1866, S. 219.
1866	X	Companies Act ...	Rep., Act VI of 1882.
1882	VI	Do. ...	Rep., Act VII of 1913.
1887	VI	Companies Act Amendment Act ...	Do.
1895	XII	Companies (Memorandum of Association) Act.	Do.
1900	IV	Companies (Branch Registers) Act.	Do.
1910	IV	Companies (Amendment) Act ...	Do.
1913	VII	Companies ...	Am., Act X of 1914. „ Act XI of 1914.

An Act to consolidate and amend the law relating to Trading Companies and other Associations.

(a) WHEREAS it is expedient to consolidate and amend the law relating to Trading Companies and other associations ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title, commencement and extent.

1. (1) This Act may be called the Indian Companies Act, 1913.

(2) It shall come into force on the first day of April, 1914 ; and

(3) It extends to the whole of British India including British Baluchistan and the Santhal Parganas.

Definitions.(b)

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “ articles ” means the articles of association of a company as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table B in the Schedule annexed to Act No. XIX of 1857 or in Table A in the First Schedule annexed to the Indian Companies Act, 1882, or in Table A in the First Schedule annexed to this Act :

VI of 1882.

(2) “ company ” means a company formed and registered under this Act or an existing company :

(3) “ the Court ” means the Court having jurisdiction under this Act :

Case-law :— (a) Interpretation of doubtful language, 15 Cr. L.J. 337 = 23 Ind. Cas. 689 = 7 Bur. L.T. 116. (b) This Act cannot be resorted to for determining words in Municipal Act, 3 M.L.T. 400 = 18 M.L.J. 349 = 31 M. 408 = 9 Cr. L.J. 68.

(4) "debenture" includes debenture stock :

(5) "director" includes any person occupying the position of a director by whatever name called :

(6) "District Court" means the principal Civil Court of original jurisdiction in a district, but does not include a High Court in the exercise of its ordinary original civil jurisdiction :

X of 1866.

VI of 1882.

(7) "existing company" means a company formed and registered under the Indian Companies Act, 1866, or under any Act or Acts repealed thereby, or under the Indian Companies Act, 1882 :

(8) "Insurance Company" means a company that carries on the business of insurance either solely or in common with any other business or businesses :

(9) "manager" includes any person occupying the position of a manager by whatever name called and whether under a contract of service or not :

(10) "memorandum" means the memorandum of association of a company as originally framed or as altered in pursuance of the provisions of this Act :

(11) "officer" includes any director, manager or secretary but, save in sections 235, 236 and 237, does not include an auditor :

(12) "prescribed" means, as respects the provisions of this Act relating to the winding up of companies, prescribed by rules made by the High Court, and as respects the other provisions of this Act, prescribed by the Governor General in Council :

(13) "private company" means a company which

(i) by its articles—

(a) restricts the right to transfer its shares ; and

(b) limits the number of its members (exclusive of persons who are in the employ of the company) to fifty ; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company ; and

(ii) continues to observe such restrictions, limitations and prohibitions :

Provided that where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this definition, be considered as a single member :

(14) "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company :

(15) "the registrar" means a registrar or assistant registrar performing under this Act the duty of registration of companies : and

(16) "share" means share in the share capital of the company, and includes stock except when a distinction between stock and shares is expressed or implied.

3. (1) The Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate :

Jurisdiction of the Courts.

Provided that the Local Government may, by notification in the local official Gazette and subject to such restrictions and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction by this Act conferred upon the Court, and in that case such District Court shall, as regards the jurisdiction so conferred, be the Court in respect of all companies having their registered offices in the District.

(2) For the purposes of jurisdiction to wind up companies, the expression 'registered office' means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

(3) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court.

PART II.

CONSTITUTION AND INCORPORATION.

4. (1) No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor General in Council, or of Royal Charter or Letters Patent.

Prohibition of partnerships exceeding certain number.

(2) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act or is formed in pursuance of an Act of Parliament or some other Act of the Governor General in Council or of Royal Charter or Letters Patent.

Memorandum of Association.

5. Any seven or more persons (or, where the company to be formed will be a private company, any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability (that is to say), either—

Mode of forming incorporated company

- (i) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares); or
- (ii) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee); or
- (iii) a company not having any limit on the liability of its members (in this Act termed an unlimited company).

Memorandum of
company limited
by shares.

6. In the case of a company limited by shares—

- (1) the memorandum shall state—
 - (i) the name of the company, with " Limited " as the last word in its name ;
 - (ii) the province in which the registered office of the company is to be situate ;
 - (iii) the objects of the company ;
 - (iv) that the liability of the members is limited ;
 - (v) the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount :
- (2) no subscriber of the memorandum shall take less than one share ;
- (3) each subscriber shall write opposite to his name the number of shares he takes.

Memorandum of
company limited
by guarantee.

7. In the case of a company limited by guarantee—

- (1) the memorandum shall state—
 - (i) the name of the company, with " Limited " as the last word in its name ;
 - (ii) the province in which the registered office of the company is to be situate ;
 - (iii) the objects of the company ;
 - (iv) that the liability of the members is limited ;
 - (v) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount :
- (2) if the company has a share capital—
 - (i) the memorandum shall also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount ;
 - (ii) no subscriber of the memorandum shall take less than one share ;
 - (iii) each subscriber shall write opposite to his name the number of shares he takes.

Memorandum of
unlimited company.

8. In the case of an unlimited company—

- (1) the memorandum shall state—
 - (i) the name of the company ;

(ii) the province in which the registered office of the company is to be situate ;

(iii) the objects of the company ;

(2) if the company has a share capital—

(i) no subscriber of the memorandum shall take less than one share;

(ii) each subscriber shall write opposite to his name the number of shares he takes.

Signature of memorandum. of 9. The memorandum shall be signed by each subscriber in the presence of at least one witness who shall attest the signature.

Restriction on alteration of memorandum. 10. A company shall not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act.

11. (1) A company shall not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.

(2) If a company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company may, with the sanction of the registrar, change its name.

(3) A company shall not be registered by a name which contains any of the following words, namely:—"Crown," "Emperor," "Empire," "Empress," "Imperial," "King," "Queen," "Royal," or words expressing or implying the sanction, approval or patronage of the Crown or the Government of India or a Local Government, except where the Governor General in Council signifies his consent to the use of such words as part of the name of the company by order in writing under the hand of one of the Secretaries to the Government of India :

Provided that nothing in this sub-section shall apply to companies registered before the commencement of this Act.

(4) Any company may, by special resolution and subject to the approval of the Local Government signified in writing, under the hand of one of the Secretaries to such Government, change its name.

(5) Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case. On the issue of such a certificate, the change of name shall be complete.

(6) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

12. (1) Subject to the provisions of this Act, a company may, by special resolution, alter the provisions of its memorandum so as to change the place of the registered office from one province to another, or with respect to the objects of the company, so far as may be required to enable it—

- (a) to carry on its business more economically or more efficiently ; or
 or
 (b) to attain its main purpose by new or improved means ; or
 (c) to enlarge or change the local area of its operations ; or
 (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company ; or
 (e) to restrict or abandon any of the objects specified in the memorandum.

(2) The alteration shall not take effect until and except in so far as it is confirmed by the Court on petition.

(3) Before confirming the alteration, the Court must be satisfied—

- (a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration ; and
 (b) that, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured to the satisfaction of the Court :

Provided that the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

13. The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

14. The Court shall, in exercising its discretion under sections 12 and 13, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members ; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement :

Provided that no part of the capital of the company may be expended in any such purchase.

15. (1) A certified copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within three months from the date of the order, be filed by the company with the registrar, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence

that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

(2) Where the alteration involves a transfer of the registered office from one province to another, a certified copy of the order confirming such change shall be filed by the company with the registrar in each of such provinces, and each of such registrars shall register the same, and shall certify under his hand the registration thereof, and the registrar for the province from which such office is transferred shall send to the registrar for the other province all documents relating to the company registered or filed in his office.

(3) The Court may by order at any time extend the time for the filing of documents with the registrar under this section for such period as the Court thinks proper.

16. No such alteration shall have any operation until registration thereof has been duly effected in accordance with the provisions of section 15, and if such registration is not effected within three months next after the date of the order of the Court confirming the alteration, or within such further time as may be allowed by the Court in accordance with the provisions of section 15, such alteration and order and all proceedings connected therewith shall, at the expiration of such period of three months or such further time, as the case may be, become absolutely null and void:

Provided that the Court may, on sufficient cause shown, revive the order on application made within a further period of one month.

Articles of Association.

17. (1) There may, in the case of a company limited by shares, and there shall, in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

(2) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule.

(3) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered.

(4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles shall state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration.

18. In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Form and signature of articles.

19. Articles shall—

- (a) be printed ;
- (b) be divided into paragraphs numbered consecutively ; and
- (c) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature.

20. (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles ; and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution.

(2) The power of altering articles under this section shall, in the case of any company formed and registered under Act No. XIX of 1857 and Act No. VII of 1860 or either of them, extend to altering any provisions in Table B annexed to Act XIX of 1857, and shall also, in the case of an unlimited company formed and registered under the said Acts or either of them, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in memorandum.

General Provisions.

21. (1) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by each member and contained a covenant on the part of each member, his heirs, and legal representatives, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

22. The memorandum and the articles (if any) shall be filed with the registrar for the province in which the registered office of the company is stated by the memorandum to be situate, and he shall retain and register them.

23. (1) On the registration of the memorandum of a company, the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

24. (1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

Conclusiveness
of certificate of in-
corporation.

(2) A declaration by an advocate, attorney or pleader entitled to appear before a High Court who is engaged in the formation of a company, or by a person named in the articles as a director, manager or secretary of the company, of compliance with all or any of the said requirements shall be filed with the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

Copies of memo-
randum and articles
to be given to mem-
bers.

25. (1) Every company shall send to every member, at his request, and on payment of one rupee or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any).

(2) If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding ten rupees.

Associations not for Profit.

26. (1) Where it is proved to the satisfaction of the Local Government that an association capable of being formed as a limited company has been or is about to be formed for promoting commerce, art, science, charity, or any other useful object, and applies or intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Local Government may, by license under the hand of one of its Secretaries, direct that the association be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

Power to dispense
with "Limited" in
name of charitable
and other companies.

(2) A license by the Local Government under this section may be granted on such conditions and subject to such regulations as the Local Government thinks fit, and those conditions and regulations shall be binding on the association, and shall, if the Local Government so directs, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of filing lists of members and directors and managers with the registrar.

(4) A license under this section may at any time be revoked by the Local Government, and upon revocation the registrar shall enter the word "Limited" at the end of the names of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section :

Provided that, before a license is so revoked, the Local Government shall give to the association notice in writing of its intention, and shall afford the association an opportunity of submitting a representation in opposition to the revocation.

Companies limited by Guarantee.

27. (1) In the case of a company limited by guarantee and not having a share capital, and registered after the commencement of this Act, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

Provision as to companies limited by guarantee.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered after the commencement of this Act, purporting to divide the undertaking of the company into shares or interests, shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

PART III.

SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED AND UNLIMITED LIABILITY OF DIRECTORS.

Distribution of Share Capital.

31. (1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars :—

Register of members.

- (i) the names and addresses, and the occupations, if any, of the members and, in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member ;
- (ii) the date at which each person was entered in the register as a member ;
- (iii) the date at which any person ceased to be a member.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues ; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

32. (1) Every company having a share capital shall once at least in every year make a list of all persons who on the day of the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company.

Annual list of members and summary.

(2) The list shall state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares

held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and persons who have ceased to be members respectively and the dates of registration of the transfers, and shall contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars :—

- (a) the amount of the share capital of the company, and the number of the shares into which it is divided ;
- (b) the number of shares taken from the commencement of the company up to the date of the return ;
- (c) the amount called up on each share ;
- (d) the total amount of calls received ;
- (e) the total amount of calls unpaid ;
- (f) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return ;
- (g) the total number of shares forfeited ;
- (h) the total amount of shares or stock for which share-warrants are outstanding at the date of the return ;
- (i) the total amount of share-warrants issued and surrendered respectively since the date of the last return ;
- (k) the number of shares or amount of stock comprised in each share-warrant ;
- (l) the names and addresses of the persons who at the date of the return are the directors of the company and of the persons (if any) who at the said date are the managers of the company ; and
- (m) the total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the registrar under this Act.

(3) The above list and summary shall be contained in a separate part of the register of members, and shall be completed within seven days after the day of the first or only ordinary general meeting in the year, and the company shall forthwith file with the registrar a copy signed by a director or by the manager or the secretary of the company, together with a certificate from such director, manager or secretary that the list and summary state the facts as they stood on the day aforesaid.

(4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.^(a)

Case-law :—(a) Plea of ignorance of law cannot be accepted, 164 P.L.R. 1914=15 Cr. L.J. 900=28 Ind. Cas. 508=38 P.W.R. 1914, Cr.; accused acting as director or manager cannot set up plea that he was not properly qualified, 14 P.R. 1916, Cr.=38 P.W.R. 1916, Cr.=17 Cr. L.J. 242=34 Ind. Cas. 962.

36. (1) The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions, as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on payment of one rupee, or such less sum as the company may prescribe, for each inspection.^(a)

(2) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act, or any part thereof, on payment of six annas for every hundred words or fractional part thereof required to be copied.

(3) If any inspection or copy required under this section is refused, the company shall be liable for each refusal to a fine not exceeding twenty rupees and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall be liable to the like penalty, and the Court may by order compel an immediate inspection of the register.

Power for company to keep branch register in the United Kingdom.

41. (1) A company having a share capital may, if so authorised by its articles, cause to be kept in the United Kingdom a branch register of members (in this Act called a British register).

(2) The company shall, within one month from the date of the opening of any British register, file with the registrar notice of the situation of the office where such register is kept and, in the event of any change in the situation of such office or of its discontinuance, shall within one month from the date of such change or discontinuance, as the case may be, file notice of such change or discontinuance.

(3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

47. (1) On the issue of a share-warrant^(b), the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely :—

Entries in register when share-warrant issued.

- (i) the fact of the issue of the warrant ;
- (ii) a statement of the shares or stock included in the warrant, distinguishing each share by its number ; and
- (iii) the date of the issue of the warrant.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for

Case-law :—(a) Object of section, 20 A. 126 ; right of inspection under section absolute, *ibid.* (b) Omission to duly stamp share warrants, penalty for, 20 C. 676.

every day during which the default continues, and every officer of the company who knowingly and wilfully continues or permits the default shall be liable to the like penalty.

Power of company limited by shares to alter its share capital.

50. (1) A company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum as follows (that is to say), it may—

- (a) increase its share capital by the issue of new shares of such amount as it thinks expedient ;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares ;
- (c) convert all or any of its paid-up shares into stock and re-convert that stock into paid-up shares of any denomination ;
- (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived ;
- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section with respect to sub-division of shares must be exercised by special resolution.

(3) Where any alteration has been made under this section in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(4) If a company makes default in complying with the requirements of sub-section (3), it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made ; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(5) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

51. (1) Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares or converted any of its shares into stock, or re-converted stock into shares, it shall within fifteen days of the consolidation and division, conversion or re-conversion, file notice with the registrar of the same, specifying the share consolidated and divided, or converted, or the stock re-converted.

Notice to registrar of consolidation of share capital, conversion of shares into stock, etc.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

53. (1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall file with the registrar, in the case of an increase of share capital, within fifteen days after the passing, or in the case of a special resolution, the confirmation of the resolution authorising the increase, and in the case of an increase of members, within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the registrar shall record the increase.

(2) If a company makes a default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Reduction of Share Capital.

55. (1) No company limited by shares shall have power to buy its own shares unless the consequent reduction of capital is effected and sanctioned in manner hereinafter provided.

(2) Subject to confirmation by the Court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may—

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
 - (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
 - (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company,
- and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(3) A special resolution under this section is in this Act called a resolution for reducing share capital.

61. (1) The registrar on production to him of an order of the Court confirming the reduction of the share capital of a company, and on the filing with him of a certified copy of the order and of a minute (approved by the Court) showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the Court may direct.

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

62. (1) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein, and shall be embodied in every copy of the memorandum issued after its registration.

Minute to form
part of memoran-
dum.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

64. If any officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any officer of the company abets any such concealment or misrepresentation as aforesaid, every such officer shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

Penalty on con-
cealment of name of
creditor.

Unlimited Liability of Directors.

70. (1) In a limited company the liability of the directors or of any director, may, if so provided by the memorandum, be unlimited.

Limited company
may have directors
with unlimited
liability.

(2) In a limited company in which the liability of any director is unlimited, the directors of the company (if any) and the member who proposes a person for election or appointment to the office of director shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters and officers of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director or proposer makes default in adding such a statement, or if any promoter or officer of the company makes default in giving such a notice, he shall be liable to a fine not exceeding one thousand rupees and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

71. (1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or of any director.

Special resolution
of limited company
making liability of
directors unlimited.

(2) Upon the confirmation of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained

in the memorandum, and a copy thereof shall be embodied in or annexed to every copy of the memorandum issued after the confirmation of the resolution.

(3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made; and every officer of the company, who knowingly and wilfully authorises or permits the default, shall be liable to the like penalty.

PART IV.

MANAGEMENT AND ADMINISTRATION.

Office and Name.

Registered office of company. 72. (1) Every company shall have a registered office to which all communications and notices may be addressed.

(2) Notice in writing of the situation of the registered office, and of any change therein, shall be filed with the registrar who shall record the same.

(3) If a company carries on business without complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which it so carries on business.

Penalties for non-publication of name. 74. (1) If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a fine not exceeding fifty rupees for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every officer of the company, who knowingly and wilfully authorises or permits the default, shall be liable to the like penalty.

(2) If any officer of a limited company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any bill head, letter paper, notice, advertisement or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, hundi, promissory note, endorsement, cheque or order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding five hundred rupees, and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Publication of authorised as well as subscribed and paid-up capital. 75. (1) Where any notice, advertisement or other official publication of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication shall also contain a statement in an equally prominent position and in equally conspicuous characters of the amount of the capital which has been subscribed and the amount paid up.

(2) Any company which makes default in complying with the requirements of this section and every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding one thousand rupees.

Meetings and Proceedings.

76. (1) A general meeting of every company shall be held once at the least in every year, and not more than fifteen months after the holding of the last preceding general meeting, and, if not so held, the company and every officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding five hundred rupees^(a).

(2) When default has been made in holding a meeting of the company in accordance with the provisions of this section, the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.

77. (1) Every company limited by shares and registered after the commencement of this Act shall, within a period of six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company which shall be called the statutory meeting.

(2) The directors shall, at least ten days before the day on which the meeting is held, forward a report (in this Act called "the statutory report") to every member of the company and to every other person entitled under this Act to receive it.

(3) The statutory report shall be certified by not less than two directors of the company or, where there are less than two directors, by the sole director and shall state—

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted ;
- (b) the total amount of cash received by the company in respect of all the shares allotted distinguished as aforesaid ;
- (c) an abstract of the receipts of the company whether from its share capital or from debentures, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout and particulars concerning the balance remaining in hand and an account or estimate of the preliminary expenses of the company ;

Case-law :—(a) Summary trial and discretion of Magistrate, 85 A. 173 = 19 Ind. Cas. 665 = 11 A.L.J. 196 = 14 Cr. L.J. 105 ; penalty provided fixed and not maximum, 37 P. L.R. 1914 = 16 P.W.R. 1914, Cr. = 15 Cr. L.J. 260 = 23 Ind. Cas. 468.

- (d) the names, addresses and descriptions of the directors, auditors (if any), managers (if any) and secretary of the company ;
- (e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company and to the cash received in respect of such shares and to the receipts and payments of the company on capital account, be certified as correct by the auditors (if any) of the company.

(5) The directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the registrar forthwith after the sending thereof to the members of the company.

(6) Every director of the company who knowingly and wilfully authorises or permits a default in complying with the provisions of sub-section (2) or sub-section (5) shall be liable to a fine not exceeding twenty rupees for every day during which the default continues^(a).

(7) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(8) The members of the company present at the meeting shall be at liberty to discuss any matters relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(9) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(10) If a petition is presented to the Court in manner provided by Part V for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting, to be held, or make such other order as may be just.

(11) The provisions of this section as to the forwarding and filing of the statutory report shall not apply in the case of a private company.

82. (1) A copy of every special and extraordinary resolution shall, within fifteen days from the confirmation of the special resolution or from the passing of the extraordinary resolution, as the case may be, be printed or type-written and filed with the registrar who shall record the same.

Registration and
copies of special and
extraordinary
resolutions.

Case-law:—(a) Director's liability for offence under Act VI of 1882, S. 75 after its repeal. See 31 P.R. 1917, Cr.

(2) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the date of the resolution.

(3) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his request, on payment of one rupee or such less sum as the company may direct.

(4) If a company makes default in so filing with the registrar a copy of a special or extraordinary resolution, it shall be liable to a fine not exceeding twenty rupees for every day during which the default continues.

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(6) Every officer of a company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

[1] Directors.

83-A. (1) Every company registered after the commencement of this Act shall have at least two directors.

(2) This section shall not apply to a private company.

[1] 83-B. In default of and subject to any regulations in the articles of a company other than a private company—

(i) the subscribers of the memorandum shall be deemed to be the directors of the company until the first directors shall have been appointed ;

(ii) the directors of the company shall be appointed by the members in general meeting ; and

(iii) any casual vacancy occurring among the directors may be filled up by the directors, but the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last appointed a director.

84. (1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company or in relation to any intended company or in any statement in lieu of prospectus filed by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus,

Restrictions on appointment or advertisement of director.

as the case may be, he has, by himself or by his agent authorised in writing—

- (i) signed and filed with the registrar a consent in writing to act as such director ; and
- (ii) save in the case of a company limited by guarantee and not having a share capital, either signed the memorandum for a number of shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any).

(2) On the application for registration of the memorandum and articles of a company the applicant shall file with the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding five hundred rupees.

(3) This section shall not apply to a private company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

85. (1) Without prejudice to the restrictions imposed by section 84, it shall be the duty of every director who is by the articles required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

(a)(2) The office of director of a company shall be vacated if the director does not, within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification ; and a person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(3) If, after the expiration of the said period or shorter time, any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding fifty rupees for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

86. The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification : Provided that nothing in this section shall be deemed to give validity to acts done by a director after the appointment of such director has been shown to be invalid.

Case-law :—(a) See 15 Cr. L. J. 380—23 Ind. Cas. 743—17 P.R. 1914 (Cr.)—39 P.W.R. 1914 (Cr.)—250 P.L.R. 1914 ; 16 A. 88.

87. (1) Every company shall keep at its registered office a register containing the names and addresses and the occupations of its directors, and file with the registrar a copy thereof, and from time to time file with the registrar notice of any change among its directors or managers.

List of directors
to be sent to regis-
trar.

(2) If default is made in complying with this section, the company shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company, who knowingly and wilfully authorises or permits the default, shall be liable to the like penalty.

Contracts.

[1] 91-A. (1) Every director who is directly or indirectly concerned or interested in any contract or arrangement entered into by or on behalf of the company shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement:

Disclosure of inte-
rest by director.

Provided that a general notice that a director is a member of any specified firm or company, and is to be regarded as interested in any subsequent transaction with such firm or company, shall as regards any such transaction be sufficient disclosure within the meaning of this sub-section, and after such general notice, it shall not be necessary to give any special notice relating to any particular transaction with such firm or company.

(2) Every director who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding one thousand rupees.

[1] 91-B. (1) No director shall, as a director, vote on any contract or arrangement in which he is either directly or indirectly concerned or interested; and if he does so vote, his vote shall not be counted:

Prohibition of
voting by interested
director.

Provided that the directors or any of them may vote on any contract of indemnity against any loss which they or any one or more of them may suffer by reason of becoming or being sureties or surety for the company.

(2) Every director who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding one thousand rupees.

[1] 91-C. (1) Where a company enters into a contract for the appointment of a manager of the company in which contract any director of the company is directly or indirectly concerned or interested, or varies any such existing contract, the company shall send an abstract of the terms of such contract or variation, as the case may be, together with a memorandum clearly indicating the nature of the interest of the director in such contract, or in such variation, to every

Disclosure to
members in case of
contract appointing
a manager.

member; and the contract shall be open to the inspection of any member at the registered office of the company.

(2) If a company makes default in complying with the requirements of sub-section (1), it shall be liable to a fine not exceeding one thousand rupees; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

[1] 91-D. (1) Every manager or other agent of a company other than a private company who enters into a contract for or on behalf of the company in which contract the company is an undisclosed principal shall, at the time of entering into the contract, make a memorandum in writing of the terms of the contract, and specify therein the person with whom it has been made.

(2) Every such manager or other agent shall forthwith deliver the memorandum aforesaid to the company and such memorandum shall be filed in the office of the company and laid before the directors at the next directors' meeting.

(3) If any such manager or other agent makes default in complying with the requirements of this section—

(a) the contract shall, at the option of the company, be void as against the company; and

(b) such manager or other agent shall be liable to a fine not exceeding two hundred rupees.

Prospectus.

92. (1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be filed for registration with the registrar on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(3) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding fifty rupees for every day from the date of the issue of the prospectus until a copy thereof is so filed.

Allotment.

103. (1) A company shall not commence any business or exercise any borrowing powers unless—

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less on the whole than the minimum subscription; and

Leg. changes :—[1] Inserted by Act XI of 1914.

- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription or, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash ; and
- (c) there has been filed with the registrar a duly verified declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with , and
- (d) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the registrar a statement in lieu of prospectus.

(2) The registrar shall, on the filing of a duly verified declaration, in accordance with the provisions of this section certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled :

Provided that, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, the registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(5) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding five hundred rupees for every day during which the contravention continues.

(6) Nothing in this section shall apply to a private company, or to a company registered before the commencement of this Act which does not issue a prospectus inviting the public to subscribe for its shares or, in so far as its provisions relate to shares, to a company limited by guarantee and not having a share capital.

104. (1) Whenever a company having a share capital makes any allotment of its shares, the company shall, within one month thereafter,—

Return as to allotments.

- (a) file with the registrar a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount (if any) paid or due and payable on each share ; and
- (b) in the case of shares allotted as fully or partly paid up otherwise than in cash, produce for the inspection and

examination of the registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and filed with the registrar copies verified in the prescribed manner of all such contracts and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

II of 1899.

(2) Where such a contract as above-mentioned is not reduced to writing, the company shall, within one month after the allotment, file with the registrar the prescribed particulars of the contract stamped with the same stamp-duty as would have been payable if the contract had been reduced to writing and these particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 31 of that Act.

(3) If default is made in complying with the requirements of this section, every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues :

Provided that, in case of default in filing with the registrar within one month after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the Court for relief, and the Court, if satisfied that the omission to file the document was accidental or due to inadvertence or that on other grounds it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such a period as the Court may think proper.

Certificates of Shares, etc.

108. (1) Every company shall, within three months after the allotment of any of its shares, debentures or debenture stock, and within three months after the registration of the transfer of any such shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

(2) If default is made in complying with the requirements of this section, the company, and every officer of the company who is knowingly a party to the default, shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

118. (1) If any person obtains an order for the appointment of a receiver of the property of a company, or appoint such a receiver under any powers contained in any instrument, he shall, within fifteen days from the date of the order or of the appointment under the powers contained in the instrument, file notice of the fact with the registrar, and the registrar

shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges.

(2) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

119. (1) Every receiver of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall once in every half-year while he remains in possession, and also on ceasing to act as receiver, file with the registrar an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also on ceasing to act as receiver file with the registrar notice to that effect, and the registrar shall enter the notice in the register of mortgages and charges.

(2) Every receiver who makes default in complying with the provisions of this section shall be liable to a fine not exceeding five hundred rupees.

Penalties.

122. (1) If any company makes default in filing with the registrar for registration the particulars—

(a) of any mortgage or charge created by the company; or

(b) of the issues of debentures of a series,

requiring registration with the registrar under the foregoing provisions of this Act, then, unless the registration has been effected on the application of some other person, the company, and every officer of the company or other person who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

(2) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration with the registrar of any mortgage or charge created by the company, the company, and every officer of the company, who knowingly and wilfully authorises or permits the default shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

(3) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

123. (1) Every limited company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge and (except in the case of

Company's register of mortgages.

signed by all the directors for the time being in British India, or, if there is only one director for the time being in British India, by such director, but in such a case there shall be subjoined to the balance-sheet a statement signed by such directors or director explaining the reason for non-compliance with the provisions of sub-section (1).

(3) If any copy of a balance-sheet which has not been signed as required by this section is issued, circulated or published, the company and every officer of the company who is knowingly a party to the default shall be punishable with fine which may extend to five hundred rupees.

134. (1) After the balance-sheet has been laid before the company at the general meeting, a copy thereof signed by the manager^(a) or secretary of the company shall be filed^(b) with the registrar at the same time as the copy of the annual list of members and summary prepared in accordance with the requirements of section 32.

Copy of balance-sheet and auditor's report to be forwarded to the registrar.

(2) If the general meeting before which a balance-sheet is laid does not adopt the balance-sheet, a statement of that fact and of the reasons therefor shall be annexed to the balance-sheet and to the copy thereof required to be filed with the registrar.

(3) This section shall not apply to a private company.

(4) If a company makes default in complying with the requirements of this section the company and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty as is provided by section 32 for a default in complying with the provisions of that section^(c).

Statement to be published by Banking and certain other Companies.

136. (1) Every company being a limited banking company or an insurance company or a deposit, provident or benefit society shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked G in the Third Schedule, or as near thereto as circumstances will admit.

Certain companies to publish statement in schedule.

(2) A copy of the statement shall be displayed and, until the display of the next following statement, kept displayed in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement on payment of a sum not exceeding eight annas.

Case-law:—(a) Managing agents are managers, 18 P.R. 1916, Cr.=143 P.L.R. 1916=17 Cr. L.J. 306=35 Ind. Cas. 482; failure to file balance-sheet, liability for, *ibid.* (b) Case triable summarily, 14 Cr. L.J. 105=35 A. 173=18 Ind. Cas. 665=11 A. L.J. 196; Filing balance-sheet within year—Director resigning before expiry of year not liable for failure to file, 15 Cr. L.J. 380=23 Ind. Cas. 748=17 P.R. 1914, Cr.=39 P.W.R. 1914, Cr.=250 P.L.R. 1914; complaint for wilful default in filing balance-sheet to be filed by registrar, 34 P.W.R. 1910, Cr. (c) Elements necessary to constitute offence, see 21 C.W.N. 840.

(4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(5) This section shall not apply to a life assurance company or provident insurance society to which the provisions of the Indian Life Assurance Companies Act, 1912, or of the Provident Insurance Societies Act, 1912, as the case may be, as to the annual statements to be made by such company or society apply with or without modifications, if the company or society complies with those provisions.

Investigation by the Registrar.

137. (1) Where the registrar, on perusal of any document which a company is required to submit to him under the provisions of this Act, is of opinion that any information or explanation is necessary in order that such document may afford full particulars of the matter to which it purports to relate, he may, by a written order call on the company submitting the document to furnish in writing such information or explanation within such time as he may specify in his order.

Power of registrar to call for information or explanation.

(2) On the receipt of an order under sub-section (1), it shall be the duty of all persons who are or have been officers of the company to furnish such information or explanation to the best of their power.

(3) If any such person refuses or neglects to furnish any such information or explanation, he shall be liable to a fine not exceeding fifty rupees in respect of each offence.

(4) On receipt of such information or explanation the registrar may annex the same to the original document submitted to him; and any additional document so annexed by the registrar shall be subject to the like provisions as to inspection and the taking of copies as the original document is subject.

(5) If such information or explanation is not furnished within the specified time, or if after perusal of such information or explanation the registrar is of opinion that the document in question discloses an unsatisfactory state of affairs, or that it does not disclose a full and fair statement of the matters to which it purports to relate, the registrar shall report in writing the circumstances of the case to the Local Government.

Inspection and Audit.

140. (1) It shall be the duty of all persons who are or have been officers of the company to produce to the inspectors all books and documents in their custody or power relating to the company.

Inspection of books and examination of officers.

(2) An inspector may examine on oath any such person in relation to its business, and may administer an oath accordingly.

(3) If any person refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding fifty rupees in respect of each offence.

145. (1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

(2) The auditors shall make a report to the members of the company on the accounts examined by them, and on every balance-sheet laid before the company in general meeting during their tenure of office, and the report shall state—

- (a) whether or not they have obtained all the information and explanations they have required ; and
- (b) whether, in their opinion, the balance-sheet referred to in the report is drawn up in conformity with the law ; and
- (c) whether such balance-sheet exhibits a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

(3) In the case of a banking company, if the company has branch banks beyond the limits of India, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in British India.

PART V.

WINDING UP.

Extraordinary Powers of Court.

195. (1) The Court may, after it has made a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company, or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs or property of the company.

(2) The Court may examine him on oath concerning the same (a), either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The Court may require him to produce any documents in his custody or power relating to the company ; but, where he claims any lien on documents produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien.

Case-law :—(a) Use of deposition as evidence, see 16 A. 88.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.

196. (1) When an order has been made for winding up a company by the Court, and the official liquidator has applied to the Court stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company in relation to the company since its formation, the Court may, after consideration of the application, direct that any person who has taken any part in the promotion or formation of the company, or has been a director, manager or other officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director, manager or other officer thereof.

(2) The official liquidator shall take part in the examination, and for that purpose may, if specially authorized by the Court in that behalf, employ such legal assistance as may be sanctioned by the Court.

(3) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the Court.

(4) The Court may put such questions to the person examined as the Court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him.

(6) A person ordered to be examined under this section may at his own cost employ any person entitled to appear before the Court, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if he is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him in civil proceedings, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The Court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the Court so directs, and subject to any rules in this behalf, be held before any District Judge or before any officer of the High Court, being an official referee, master, registrar or deputy registrar, and the powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

197. The Court, at any time either before or after making a winding up order on proof of probable cause for believing that a contributory is about to quit British India or otherwise to abscond, or to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and moveable property to be seized, and him and them to be safely kept until such time as the Court may order.

Power to arrest absconding contributory.

198. Any powers by this Act conferred on the Court shall be in addition to, and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Saving of other proceedings.

Voluntary winding up.

208. (1) The liquidator in a voluntary winding up shall, within twenty-one days after his appointment, file with the registrar a notice of his appointment in the form prescribed^(a).

Notice by liquidator of his appointment.

(2) If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Supplemental Provisions.

235. (1) Where, in the course of winding up a company, it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator or any officer of the company has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to re-pay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

Power of Court to assess damages against delinquent directors, etc. (b).

(2) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

(3) The Indian Limitation Act, 1908, shall apply to an application under this section as if such application were a suit.

IX of 1908.

236. If any director, manager, officer or contributory of any company being wound up destroys, mutilates, alters or falsifies^(c) or fraudulently secretes any books, papers or securities, or makes, or is privy to the making of,

Penalty for falsification of books.

Case-law:—(a) Object of, 15 A.L.J. 346; notice not given, prosecution if legal. *ibid.* (b) Managing director when guilty under Ss. 409, 477-A, I.P.C., 29 P.W.R. 1915, Cr.=14 P.R. 1915, Cr. (c) Making false balance-sheet before winding up no offence, 16 A. 88; A.W.N. (1894) 23.

any false or fraudulent entry in any register book of account or document belonging to the company with intent to defraud or deceive any person, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

237. (1) If it appears to the Court in the course of a winding up by or subject to the supervision of the Court that any past or present director, manager, officer or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in the winding up, or of its own motion, direct the official liquidator or the liquidator (as the case may be) to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company.

Prosecution of delinquent directors, etc.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager, officer or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the Court, may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities.

238. If any person, upon any examination upon oath authorised under this Act, or in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Penalty for false evidence.

242. (1) When a company has been wound up and is about to be dissolved, the documents of the company and of the liquidators may be disposed of as follows (that is to say):—

Disposal of documents of company.

- (a) in the case of a winding up by or subject to the supervision of the Court, in such way as the Court directs;
- (b) in the case of a voluntary winding up, in such way as the company by extraordinary resolution directs.

(2) After three years from the dissolution of the company, no responsibility shall rest on the company or the liquidators, or any person to whom the custody of the documents has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

243. (1) Where a company has been dissolved, the Court may, at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

Power of Court to declare dissolution of company void.

197. The Court, at any time either before or after making a winding up order on proof of probable cause for believing that a contributory is about to quit British India or otherwise to abscond, or to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and moveable property to be seized, and him and them to be safely kept until such time as the Court may order.

198. Any powers by this Act conferred on the Court shall be in addition to, and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Voluntary winding up.

208. (1) The liquidator in a voluntary winding up shall, within twenty-one days after his appointment, file with the registrar a notice of his appointment in the form prescribed^(a).

(2) If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Supplemental Provisions.

235. (1) Where, in the course of winding up a company, it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator or any officer of the company has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to re-pay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(2) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

(3) The Indian Limitation Act, 1908, shall apply to an application under this section as if such application were a suit.

236. If any director, manager, officer or contributory of any company being wound up destroys, mutilates, alters or falsifies^(a) or fraudulently secretes any books, papers or securities, or makes, or is privy to the making of,

Case-law :—(a) Object of, 15 A.L.J. 346; notice not given, prosecution if legal, *ibid.* (b) Managing director when guilty under Ss. 409, 477-A, I.P.C., 29 P.W.R. 1915, Cr.—14 P.R. 1915, Cr. (c) Making false balance-sheet before winding up no offence, 16 A. 88; A.W.N. (1894) 28.

any false or fraudulent entry in any register book of account or document belonging to the company with intent to defraud or deceive any person, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

237. (1) If it appears to the Court in the course of a winding up by or subject to the supervision of the Court that any past or present director, manager, officer or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in the winding up, or of its own motion, direct the official liquidator or the liquidator (as the case may be) to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company.

Prosecution of delinquent directors, etc.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager, officer or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the Court, may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities.

238. If any person, upon any examination upon oath authorised under this Act, or in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Penalty for false evidence.

242. (1) When a company has been wound up and is about to be dissolved, the documents of the company and of the liquidators may be disposed of as follows (that is to say):—

Disposal of documents of company.

(a) in the case of a winding up by or subject to the supervision of the Court, in such way as the Court directs;

(b) in the case of a voluntary winding up, in such way as the company by extraordinary resolution directs.

(2) After three years from the dissolution of the company, no responsibility shall rest on the company or the liquidators, or any person to whom the custody of the documents has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

243. (1) Where a company has been dissolved, the Court may, at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

Power of Court to declare dissolution of company void.

(2) It shall be the duty of the person on whose application the order was made, within twenty-one days after the making of the order, to file with the registrar a certified copy of the order, and if that person fails so to do, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

244. (1) Where a company is being wound up, if the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, file with the registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

Information as to
pending liquidations.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor or contributory shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code, and shall be punishable accordingly on the application of the liquidator.

XLV of 1860.

(3) If a liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding five hundred rupees for each day during which the default continues.

245. (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in British India, or elsewhere within the dominions of His Majesty, before any Court, Judge or person lawfully authorised to take and receive affidavits, or in any part of India other than British India before any Court authorised or continued by the Governor General in Council, or in any place outside His Majesty's dominions before any of His Majesty's Consuls or Vice-Consuls.

Court or person
before whom affidavit
may be sworn.

(2) All Courts, Judges, Justices, Commissioners, and persons acting judicially in British India shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, Consul or Vice-Consul, attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Part.

PART VI.

REGISTRATION OFFICE AND FEES.

248. (1) For the purposes of the registration of companies under this Act, there shall be offices at such places as the Local Government thinks fit, and no company shall be registered except at an office within the province in which, by the memorandum, the registered office of the company is declared to be established.

Registration
offices.

(2) The Local Government may appoint such registrars and assistant registrars as it thinks necessary for the registration of companies under this Act, and may make regulations (*) with respect to their duties.

(3) The salaries of the persons appointed under this section shall be fixed by the Local Government.

(4) The Local Government may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(5) Any person may inspect the documents kept by the registrar on payment of such fees as may be appointed by the Local Government, not exceeding one rupee for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar on payment for the certificate, certified copy or extract, of such fees as the Local Government may appoint, not exceeding three rupees for a certificate of incorporation, and not exceeding six annas for every hundred words or fractional part thereof required to be copied.

(6) Whenever any act is by this Act directed to be done to or by the registrar it shall, until the Local Government otherwise directs, be done to or by the existing registrar of joint-stock companies or in his absence to or by such person as the Local Government may for the time being authorize; but, in the event of the Local Government altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the Local Government may appoint.

PART X.

COMPANIES ESTABLISHED OUTSIDE BRITISH INDIA.

277. (1) Every company incorporated outside British India which at the commencement of this Act has a place of business in British India, and every such company which after the commencement of this Act establishes such a place of business within British India shall, within six months from the commencement of this Act or within one month from the establishment of such place of business, as the case may be, file with the registrar in the province in which such place of business is situated,—

- (a) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the

Case-law :—(a) Failure to file balance sheet. who can prosecute for, 8 Ind. Cas. 190 —85 P.W.R. 1910, Cr.; power of High Court to interfere in revision in pending case. *ibid.*

instrument is not written in the English language, a certified translation thereof ;

- (b) the full address of the registered or principal office of the company ;
- (c) a list of the directors and managers (if any) of the company ;
- (d) the names and addresses of some one or more persons resident in British India authorised to accept on behalf of the company service of process and any notices required to be served on the company ;

and in the event of any alteration being made in any such instrument or in such address or in the directors or managers or in the names or addresses of any such persons as aforesaid, the company shall, within the prescribed time, file with the registrar a notice of the alteration.

(2) Any process or notice required to be served on the company shall be sufficiently served, if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(3) Every company to which this section applies shall in every year file with the registrar of the province in which the company has its principal place of business—

- (i) in a case where by the law, for the time being in force, of the country in which the company is incorporated such company is required to file with the public authority an annual balance-sheet,—a copy of that balance-sheet ; or
- (ii) in a case where no such provision is made by the law, for the time being in force, of the country in which the company is incorporated,—such a statement in the form of a balance-sheet as such company would, if it were a company formed and registered under this Act, be required to file in accordance with the provisions of this Act :

Provided that the Governor General in Council may, by notification in the Gazette of India subject to such restrictions and conditions, if any, as he may therein prescribe, exempt any such company or any class of such companies from this requirement.

(4) Every company to which this section applies and which uses the word " Limited " as part of its name, shall—

- (a) in every prospectus inviting subscriptions for its share or debentures in British India state the country in which the company is incorporated ; and
- (b) conspicuously exhibit on every place where it carries on business in British India the name of the company and the country in which the company is incorporated in letters easily legible in English characters, and also, if any place where it carries on business is beyond the local limits of the ordinary original civil jurisdiction of a High Court, in

the characters of one of the vernacular languages used in that place; and

- (c) have the name of the company and of the country in which the company is incorporated mentioned in legible English characters in all bill heads and letter paper, and in all notices, advertisements and other official publications of the company.

(5) If any company to which this section applies fails to comply with any of the requirements of this section, the company, and every officer or agent of the company, shall be liable to a fine not exceeding five hundred rupees or, in the case of a continuing offence, fifty rupees for every day during which the default continues.

(6) For the purposes of this section—

- (a) the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation ;
 (b) the expression "place of business" includes a share transfer or share registration office ;
 (c) the expression "director" includes any person occupying the position of director, by whatever name called ; and
 (d) the expression "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of the company.

(7) There shall be paid to the registrar for registering any document required by this section to be filed with him a fee of five rupees or such smaller fee as may be prescribed.

PART XI.

SUPPLEMENTAL.

Legal proceedings, offences, etc.

278. (1) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act.

(2) If any offence which by this Act is declared to be punishable by fine only is committed by any person within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay, such offence shall be punishable upon summary conviction by any Presidency Magistrate of the place at which such Court is held.

(3) Notwithstanding anything in the Code of Criminal Procedure, 1898, every offence against this Act shall, for the purposes of the said V of 1898. Code, be deemed to be non-cognizable.

Case-law :—(a) *Semble*, definition of offences in Crim. Pro. Code and General Clauses Acts applies to this Act, 8 Ind. Cas. 190=35 P.W.R. 1910 (Cr.) ; Criminal Court has power to try case brought on complaint under S. 76, *supra*, *ibid*.

279. The Court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information the fine is recovered.

282. Whoever in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Act wilfully makes a statement false in any material particular, knowing it to be false,^(a) shall be punishable with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

283. If any person or persons trade or carry on business under any name or title of which "Limited" is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding fifty rupees for every day upon which that name or title has been used.

THE INDIAN COPYRIGHT ACT, 1914.

(ACT III OF 1914.)

[Passed on the 24th February, 1914.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1847	XX	Copyright	Rep. in pt., Act XVII of 1862. " Act XIV of 1870. " Act IX of 1871. " Act XVI of 1874. " Act XII of 1876. " Act I of 1879.
1911	1 & 2 Geo. 5, Ch. 46.	"	Rep., Act III of 1914. Am., Act III of 1914.
1914	III	Copyright	

An Act to modify and add to the provisions of the Copyright Act, 1911.

WHEREAS it is expedient to modify and add to the provisions of the 1 & 2 Geo. 5, Copyright Act, 1911, in its application to British India: It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title and extent. 1. (1) This Act may be called the Indian Copyright Act, 1914.

Case-law :—(a) Cheating by furnishing false balance-sheet, 16 A. 88.

(2) It extends to the whole of British India including British Baluchistan, the District of Angul and the Sonthal Parganas.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "the Copyright Act" means the Act of Parliament entitled the Copyright Act, 1911; and

1 & 2 Geo. 5,
c. 46.

(2) words and expressions defined in the Copyright Act have the same meanings as in that Act.

* * * * *

CHAPTER III.

PENALTIES.

Offences in respect of infringing copies.

7. If any person knowingly—

- (a) makes for sale or hire any infringing copy (a) of a work in which copyright subsists; or
- (b) sells or lets for hire, or by way of trade exposes or offers for sale or hire, any infringing copy of any such work; or
- (c) distributes infringing copies of any such work, either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or
- (d) by way of trade exhibits in public any infringing copy of any such work; or
- (e) imports for sale or hire into British India any infringing copy of any such work;

he shall be punishable with fine which may extend to twenty rupees for every copy dealt with in contravention of this section, but not exceeding five hundred rupees in respect of the same transaction.

8. If any person knowingly makes, or has in his possession, any

Possession of plates for purpose of making infringing copies.

plate for the purpose of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright, he shall be punishable with fine which

may extend to five hundred rupees.

9. If any person, after having been previously convicted of an offence

Punishment on second conviction.

punishable under section 7 or section 8 is subsequently convicted of an offence punishable under either of these sections, he shall be punishable with simple imprisonment

which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Case-law :—(a) As for translation, see 13 A.L.J. 696=30 Ind. Cas. 480=16 Cr. L.J. 666; loss not essential to complete offence, 28 P.R. 1916 (Cr.).

10. (1) The Court before which any offence under this Chapter is tried may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies, or plates for the purpose of making infringing copies, be destroyed or delivered up to the owner of the copyright, or otherwise dealt with as the Court may think fit.

(2) Any person affected by an order under sub-section (1) may, within thirty days of the date of such order, appeal to the Court to which appeals from the Court making the order ordinarily lie; and such appellate Court may direct that execution of the order be stayed pending consideration of the appeal.

11. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act.

12. The provisions of this Chapter shall not apply to any case to which section 9 of the Copyright Act, regarding the restrictions on remedies in the case of a work of architecture, applies.

* * * * *

THE CORONERS' ACT, 1871.

(ACT IV OF 1871.)

[Passed on the 27th January, 1871.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1793	St. 33 Geo. III, c. 53, s. 157.	East India Company Act ...	Rep., Act IV of 1871.
1828	St. 9 Geo. IV, c. 74, ss. 5, 6 and 51.	Criminal Law of India Act ...	Do.
1848	IV	Coroners' Juries ...	Do.
1850	XLV	Coroners' ...	Do.
1871	IV	Coroners' ...	Rep. in pt., Act IX of 1871. Do. Act X of 1873. Do. Act XVI of 1874. Rep. and Am. in pt., Act X of 1881. Am. in pt., Act V of 1889. Rep. in pt., Act XII of 1891. Rep. and Am. in pt., Act IV of 1908.

An Act to consolidate and amend the laws relating to Coroners.

WHEREAS it is expedient to consolidate and amend the laws relating to Coroners in the Presidency Towns; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

- | | |
|-----------------------|---|
| Short title. | 1. This Act may be called "The Coroners' Act, (a) 1871." |
| Local extent. | [<i>Repealed by the Coroners' Act, X of 1881.</i>] |
| Commencement. | [<i>Repealed by the Repealing Act, XVI of 1874.</i>] |
| Repeal of enactments. | 2. [<i>Repealed by the Repealing Act, XII of 1873.</i>] |

CHAPTER II.

APPOINTMENT OF CORONERS.

- | | |
|---|--|
| [1] 3. Within the local limits of the ordinary original civil jurisdiction of each of the High Courts of Judicature at Fort William and Bombay, there shall be a Coroner. Such Coroners shall be called respectively the Coroner of Calcutta and the Coroner of Bombay. | |
| Coroners of Calcutta and Bombay. | |

- | | |
|--|--|
| 4. Every such officer shall be appointed and may be suspended or removed by the Local Government. [2] | |
| 5. Every Coroner shall be deemed a public servant within the meaning of the Indian Penal Code. XLV of 1860 | |
| 6. Any Coroner may hold simultaneously any other office under Government. | |
| 7. [<i>Repealed by the Indian Oaths Act X of 1873.</i>] | |

Their appointment, suspension and removal.

Coroners to be 'public servants.'

Power to hold other offices.

Oath to be taken by Coroner.

CHAPTER III.

DUTIES AND POWERS OF CORONERS.

- | | |
|--|--|
| 8. When a Coroner [3] has reason to believe [3] that the death of any person has been caused by accident, homicide, suicide, or suddenly by means unknown, or that any person being a prisoner has died in prison, | |
| and that the body is lying within the place for which the Coroner is so appointed, | |

Leg. Changes :—[1] This section was substituted for the original section by the Coroners' (Madras) Act, V of 1889, S. 2, which abolished the office of Coroner in the town of Madras and enacted that Ss. 174, 175 and 176 of the Crim. Pro. Code, 1882, should, in their application to the town of Madras, be read in a certain manner. [2] This section had another paragraph which was repealed by the Amending Act, XII of 1891. [3] These words were substituted for the original words "is informed" by the Coroners' Act, X of 1881, S. 5.

Case-law :—(a) Is a special enactment and is not affected by the Crim. Pro. Code, 31 O. 1; 16 B. 159 and 2 Ind. Jur. N.S. 101.

the Coroner shall enquire (a) into the cause of death.

Every such enquiry shall be deemed a judicial proceeding within the XLV of 1860, meaning of section 193 of the Indian Penal Code.

9. Whenever a prisoner dies in a prison situate within the place for which a Coroner is so appointed, the Superintendent of the prison shall send for the Coroner before the body is [1] disposed of [1]. Any Superintendent failing herein shall on conviction before a Magistrate be punished with fine not exceeding five hundred rupees.

Coroner to be sent for when prisoner dies.

Nothing in the former part of this section applies to cases in which the death has been caused by cholera or other epidemic disease.

Power to hold inquests on bodies within local limits wherever cause of death occurred.

10. Whenever an inquest ought to be holden on any body lying dead within the local limits of the jurisdiction of any Coroner, he shall hold such inquest, whether or not the cause of death arose within his jurisdiction.

11. A Coroner may order a body to be disinterred within a reasonable time after the death of the deceased person, either for the purpose of taking an original inquisition where none has been taken, or a further inquisition [2] where the Coroner considers it necessary or desirable in the interests of justice to take a further inquisition (b) [2].

Power to order body to be disinterred.

12. On receiving notice of any death mentioned in section 8 the Coroner shall summon five, seven, nine, eleven, thirteen or fifteen respectable persons to appear before him at a time and place to be specified in the summons, for the purpose of enquiring when, how, and by what means the deceased came by his death.

Summoning jury.

Inquest may be on Sunday.

Any inquest under this Act may be held on a Sunday.

13. When the time arrives, the Coroner shall proceed to the place so specified, open the Court by proclamation, and call over the names of the jurors.

Opening Court.

14. When a sufficient jury is in attendance, he shall administer an oath to each juror to give a true verdict according to the evidence, and shall then proceed with the jury to view the body.

Jurors to be sworn.

Leg. Changes :—[1] These words were substituted for the word "buried" by Act IV of 1908, S. 2. [2] These words were substituted for the original words "where the first was insufficient" by Act IV of 1908, S. 3.

Case-law :—(a) No analogy exists between a Coroner's inquest and a Magisterial inquiry under S. 176, Crim. Pro. Code, 3 C. 742 (752)=3 C.L.R. 59; a Presidency Magistrate is not ousted of his jurisdiction to inquire into a case because a Coroner has inquired into it and committed it for trial to the High Court, Rat. Un. Or. C. 540; 16 B. 159; 31 C. 1. (b) See 27 P.R. 1908, Or.

15. The Coroner and the jury shall view and examine the body at the first sitting of the inquest, and the Coroner shall
View of body. make such observations to the jury as the appearance of the body requires.

[1] Provided that the Coroner may, with the concurrence of a majority of the jury, dispense with a view of the body, if he is satisfied, from medical evidence, or medical certificates, that no advantage would result from such viewing.

16. The Coroner shall then make proclamation for the attendance of witnesses, or, where the enquiry is conducted in secret, shall call in separately such as know anything concerning the death.
Proclamation for witnesses.

17. [2] It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses; the Coroner shall inquire of such circumstances and the cause of death, and, if before or during the inquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest.
Summoning witnesses.

Any person disobeying such summons shall be deemed to have committed an offence under section 174, section 175, or section 176 of the Indian Penal Code, as the case may be. [2] XLV of 1860.

For the purpose of causing prisoners to be brought up to give evidence, the Coroner shall be deemed a Criminal Court within the meaning of [3] Part IX of the Prisoners Act, 1900. [3]

18. The Coroner may direct the performance of a *post mortem* (a) examination, with or without an analysis of the contents of the stomach or intestines, by any medical witness summoned to attend the inquest; and every medical witness, other than the Chemical Examiner to Government, shall be entitled to such reasonable remuneration as the Coroner thinks fit.
Post mortem examinations.
Fees to medical witnesses.

[4] **18-A.** Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Act, may be used as evidence in any inquest under this Act and in any subsequent inquiry, trial or other proceeding under the Code of Criminal Procedure, 1898. V of 1898.

Leg. Changes :—[1] This paragraph was added by Act IV of 1908, S. 4. [2] The first two paragraphs were substituted by Act X of 1881, S. 6. [3] This expression was substituted by Act IV of 1908, S. 5. [4] This section was added by Act IV of 1908, S. 6.

Case-law :—(a) *Post mortem* report only to be used for refreshing memory but not as evidence, 6 O. W. N. 98.

Evidence to be on oath.

Evidence on behalf of accused.

19. All evidence given under this Act shall be on oath, and the Coroner shall be bound to receive evidence on behalf of the party (if any) accused of causing the death of the deceased person.

Witnesses unacquainted with the English language shall be examined through the medium of an interpreter, who shall be sworn to interpret truly as well the oath as the questions put to, and the answers given by, the witnesses.

After each witness has been examined, the Coroner shall enquire whether the jury wish any further questions to be put to the witness, and if the jury wish that any such questions should be put, the Coroner shall put them accordingly.

Questions suggested by jury.

20. The Coroner shall commit to writing the material parts of the evidence given to the jury, and shall read or cause to be read over such parts to the witness and then procure his signature thereto.

Coroner to take down evidence in writing.

XLV of 1860, Witnesses to sign depositions.

Any witness refusing so to sign shall be deemed to have committed an offence under section 180 of the Indian Penal Code.

Coroner to subscribe depositions.

Every such deposition shall be subscribed by the Coroner.

I of 1872.

Coroner a Magistrate.

[1] For the purposes of section 26 of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate.[1]

Adjournment of inquest.

21. The Coroner may adjourn the inquest from time to time, and from place to place.

Whenever the inquest is adjourned the Coroner shall take the recognizances of the jurors to attend at the time and place appointed, and notify to the witnesses when and where the inquest will be proceeded with.

Jurors' recognizances.

The amount of such recognizances shall in each case be fixed by the Coroner, [2] and the whole, or such part thereof as to the Coroner seems fit, shall, in default of attendance by the jurors, be recoverable in the same manner as a fine imposed under section 31. [2]

Coroner to sum up to jury.

22. When all the witnesses have been examined the Coroner shall sum up the evidence to the jury, and the jury shall then consider their verdict.

23. When the verdict is delivered the Coroner shall draw up the inquisition according to the finding of the jury, or, when the jury is not unanimous, according to the opinion of the majority.

Coroner to draw up inquisition.

Leg. Changes:—[1] This paragraph was added by Act X of 1881, S. 7. [2] These words were added by Act IV of 1908, S. 7.

Contents of inquisition. 24. Every inquisition (a) under this Act shall be signed by the Coroner with his name and style of office and by the jurors, and shall set forth—

- (1) where, when, and before whom the inquisition is holden,
- (2) who the deceased is,
- (3) where his body lies,
- (4) the names of the jurors, and that they present the inquisition upon oath,
- (5) where, when, and by what means the deceased came by his death, and
- (6) if his death was occasioned by the criminal act of another, who is guilty thereof.

If the name of the deceased be unknown, he may be described as a certain person to the jurors unknown.

Every such inquisition shall be in the form set forth in the second schedule hereto annexed, with such variation as the circumstances of each case require.

Procedure where death is found due to an act amounting to an offence. [1] (b) 25. When the jury or a majority of the jury find that the death of the deceased person was occasioned by an act which amounts to an offence under any law in force in British India, the Coroner shall immediately after the inquest forward a copy of the inquisition, together with the names and addresses of the witnesses, to the Commissioner of Police.

Power to arrest and commit for trial. [2] 26. The Coroner may also, where the verdict justifies him in so doing, issue his warrant for the apprehension of the person who is found to have caused the death of the deceased person, and send him forthwith to a Magistrate empowered to commit him for trial.

Power to accept bail. 27. *[Repealed by the Coroners' Amendment Act, IV of 1908, S. 10.]*

Warrant for burial. 28. When the proceedings are closed, or before, if it be necessary to adjourn the inquest, the Coroner shall give his warrant for the [3] disposal of the body on which the inquest has been taken.

Inquisitions not to be quashed for want of form. 29. No inquisition found upon or by any inquest shall be quashed for any technical defect.

Amendment of inquisition. In any case of technical defect, a Judge of the High Court may, if he thinks fit, order the inquisition to be amended, and the same shall forthwith be amended accordingly.

Leg. Changes :—[1] This section was substituted by Act IV of 1908, S. 8. [2] This section was substituted by Act IV of 1908, S. 9. [3] This was substituted for the word "burial" by Act IV of 1908, S. 11.

Case-law :—(a) Formerly, *cf.* 81 C. 1, an inquisition by the Coroner had the effect of a commitment of the accused to the High Court, and until the High Court accepted the Coroner's inquisition as a commitment, a Presidency Magistrate had jurisdiction over the case, but now, after the Act IV of 1908, it has not the effect of a commitment, as under S. 26, the Coroner can only send the accused to the nearest Magistrate who can commit for trial. (b) See 19 B. 159.

- 30.** It shall no longer be the duty of the Coroner to enquire whether any person dying by his own act was or was not *felo de se*, to enquire of treasure trove or wrecks, to seize any fugitive's goods, to execute process, or to exercise as Coroner any jurisdiction not expressly conferred by this Act.
- Cessation of jurisdiction as to treasure trove, wrecks, &c.* *Felo de se.* *Deodands.* *A felo de se shall not forfeit his goods.* *Deodands are hereby abolished.*

CHAPTER IV.

CORONERS' JURIES.

- 31.** Whenever any person has been duly summoned to appear as a juror by a Coroner, and fails or neglects to attend at the time and place specified in the summons, the Coroner may cause him to be openly called in his Court three times to appear and serve as a juror; and upon the non-appearance of such person, and proof that such summons has been served upon him, or left at his usual place of abode, may impose such fine upon the defaulter, not exceeding fifty rupees, as to the Coroner seems fit.
- Fine on juror neglecting to attend.*

- 32.** The Coroner shall make out and sign a certificate, containing the name and surname, the residence and trade or calling of every person so making default, together with the amount of the fine so imposed, and the cause of such fine,
- Certificate as to defaulting juror.*

and shall send such certificate to one of the Magistrates of the place of which he is the Coroner,

- and shall cause a copy of such certificate to be served upon the person so fined, by having it left at his usual place of residence, or by sending the same through the Post Office, addressed as aforesaid and registered.
- Service of copy of certificate.*

- 33.** Thereupon such Magistrate shall cause the fine to be levied in the same manner as if it had been imposed by himself.
- Levy of fine.*

- 34.** Unless in case of necessity, no person who has appeared, or has been summoned to appear, as a juror on an inquest, and has not made default, shall, within one year after such appearance or summons, be summoned to appear as a juror under this Act.
- Jurors not to be twice summoned within the year.*

- 35.** When an inquest is held on the body of a prisoner dying within a prison, no officer of the prison and no prisoner confined therein shall be a juror on such inquest.
- Jurors on inquest on prisoner.*

CHAPTER V.

RIGHTS AND LIABILITIES OF CORONERS.

- 36.** Every Coroner shall be entitled to such salary for the performance of the duty of his office as is prescribed in that behalf by the Governor General in Council.
- Coroner's salary.*

37. All disbursements duly made by a Coroner for fees to medical witnesses, hire of rooms for the jury and the like, shall be repaid to him by the Local Government.

38. Every Coroner may from time to time, with the previous sanction of the Local Government, appoint, by writing under his hand, a proper person to act for him as his deputy in the holding of inquests[1] * * *

All inquests taken and other acts done by any such deputy, under or by virtue of any such appointment, shall be deemed to be the acts of the Coroner appointing him :

Provided that no such deputy shall act for any such Coroner except during the illness of the said Coroner, or during his absence for any lawful and reasonable cause.

Revocation of appointment. Every such appointment may at any time be cancelled and revoked by the Coroner by whom it was made.

Exemption from serving on juries. **39.** No Coroner or Deputy Coroner shall be liable to serve as a juror.

Privilege from arrest. **40.** Coroners and Deputy Coroners shall be privileged from arrest while engaged in the discharge of their official duty.

41. Any Coroner or Deputy Coroner failing to comply with the provisions of this Act, or otherwise misconducting himself in the execution of his office, shall be liable to such fine as the Chief Justice of the High Court, upon summary examination and proof of the failure or misconduct, thinks fit to impose.

42. No proceeding for anything done under this Act, or for any failure to comply with its provisions, shall be commenced or prosecuted[2] * * * after tender of sufficient amends.

[3] FIRST SCHEDULE.

* * * * *

SECOND SCHEDULE.

Form of Inquisition.

AN INQUISITION taken at _____ on the _____ day of 187 _____ before E F, Coroner of _____ [4] in the case of A B deceased [4] upon the oath of G H, I J, K L and M N, then and there duly sworn and charged to enquire when, how, and by what means the said A B came to his death.

We, the said jurors, find unanimously [or by a majority of _____] that the death of the said A B was caused, on or about the _____ day of _____

Leg. Changes :—[1] Certain words regarding the oath to be taken by the Coroner's Deputy were repealed by the Indian Oaths Act, X of 1873. [2] Certain words regarding the limitation of suits were repealed by the Limitation Act, IX of 1871. [3] Repealed by the Repealing Act, X of 1873. [4] These words were substituted for the original words "on view of the body of A B then and there lying dead" by Act IV of 1906, S. 12.

187 , by [here state the cause of death as in the following examples—

1. *Cases of homicide*—a blow on the head with a stick inflicted on him by C D, under such circumstances that the act of C D was justifiable [or accidental] homicide.
—a stab on the heart with a knife inflicted on him by C D, under such circumstances that the act of C D was culpable homicide not amounting to murder, [or culpable homicide amounting to murder, or a rash or negligent act not amounting to culpable homicide].
2. *Cases of accident*—falling out of a boat into the river Hughli, whereby he was drowned.
—a kick from a horse which fractured his skull and ruptured blood-vessels in his head.
3. *Cases of suicide*—shooting himself through the head with a pistol.
—arsenic, which he voluntarily administered to himself.
4. *Cases of sudden death by means unknown*—disease of the heart.
—apoplexy.
—sunstroke.

And so say the jurors upon their oath aforesaid.

Witness our hands. E F, Coroner of

G H, I J, K L, M N, O P (jurors).

THE COTTON CLOTH ACT, 1918.

(ACT XXIII OF 1918.)

[Passed on the 26th September, 1918.]

An Act to take powers to provide for the cheap supply of cotton cloth to the poorer classes of the community.

WHEREAS it is expedient to take powers for the purpose of encouraging or maintaining the supply, at reasonable rates, to the poorer classes of the community, of cotton cloth manufactured in this country ; It is hereby enacted as follows :—

Short title. 1. This Act may be called the Cotton Cloth Act, 1918.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "Controller" means a Controller appointed under this Act ;

(b) "Cotton cloth" means cotton cloth manufactured in this country ; and

- (c) "Standard cloth" means any kind of cotton cloth which a Controller may, from time to time, declare to be standard cloth.

3. The Governor General in Council may, by notification in the Gazette of India, appoint one or more persons as he

Power to appoint
Controllers.

may think fit to be Controllers for the purposes of this Act, and shall specify in any such notification the area in which any Controller so appointed shall

exercise his powers.

4. (1) Whenever it appears to a Controller that such a course is necessary or expedient for the purpose of encouraging or maintaining the supply of standard cloth, at

Powers of the
Controller.

reasonable rates to the poorer classes of the community, he may (subject to this Act and the rules

made thereunder and to the control of the Governor General in Council) make general or special orders regulating or giving directions within the area in which he is empowered, with respect to the manufacture, transport, distribution and sale or purchase of, or other dealings in, cotton cloth.

(2) Without prejudice to the generality of the foregoing power, orders may be made by a Controller—

- (a) declaring and defining the classes of standard cloth ;
- (b) prescribing distinctive indications which shall be woven into, impressed or otherwise displayed upon, different classes of standard cloth ;
- (c) requiring any person, who ordinarily manufactures cotton cloth, to manufacture, or provide for the manufacture of, standard cloth in such quantity, of such quality and by such date as the Controller may direct ; and
- (d) fixing the prices to be paid to the manufacturer for standard cloth or for any particular class of standard cloth, and providing for the payment thereof on delivery :

Provided that in fixing prices the Controller shall have regard to the cost of production and to the allowance of a reasonable profit, without necessarily taking into consideration the market-price, and if the Controller is satisfied that the manufacturer has incurred actual loss arising out of forward contracts entered into before the commencement of this Act and that such loss is immediately attributable to an order under this Act, he may take such loss into account :

Provided further that the Controller may fix different prices in the case of different localities or, if special reasons exist, in respect of different manufacturers in the same locality.

5. Where a Controller is appointed in exercise of the power conferred by section 3, the Governor General in Council

Appointment of
Advisory Com-
mittees.

shall appoint a Committee consisting of such number of persons having knowledge of the cotton or cotton cloth trade as he thinks fit to assist the Controller

with their advice in the performance of his duties. Before a Controller

issues any order declaring and defining the classes of standard cloth or fixing the prices to be paid to the manufacturer, he shall consult the Committee, and he may consult the Committee on any other matter connected with his duties :

Provided that, if the opinion of the majority of members of the Committee who are present at any meeting is adverse to the issue of any order, the Controller shall, if he does not accept the Committee's advice, refer the matter for the decision of the Governor General in Council.

6. Where, by an order made in the exercise of powers conferred by section 4, the Controller has directed a manufacturer to manufacture, or provide for the manufacture of, standard cloth and has fixed the price therefor, the manufacturer shall deliver the same at such time and place and in such manner as the Controller may specify from time to time, and the Controller shall pay or cause to be paid to the manufacturer the said price, together with the freight, if any, actually paid by the manufacturer.

7. Subject to the control of the Governor General in Council, a Controller may, from time to time by order in writing, delegate all or any of his powers subject to such conditions and restrictions as may be prescribed therein.

8. If any person acts in contravention of or, without reasonable cause, fails to comply with the provisions of any order made under section 4, or counterfeits upon any cloth a distinctive indication prescribed by the Controller, such person shall be punishable with imprisonment which may extend to six months, or with fine or with both.

9. (1) The Local Government shall, if standard cloth is sold in the province, by order in writing which shall be notified in the local official Gazette, fix the price at which alone standard cloth or any class of standard cloth shall be sold to the public.

(2) Orders may be made fixing different prices for different localities or for different methods of sale.

(3) Every such order shall be published in such manner as the Local Government may consider to be best adapted for bringing the prices so fixed to the notice of the poorer classes.

10. (1) No person shall sell or keep, offer or expose for sale to the public, standard cloth otherwise than at such price as may be fixed by the Local Government and in accordance with the terms and conditions of a license issued in this behalf.

(2) If any person contravenes the provisions of sub-section (1), he shall be punishable with imprisonment which may extend to six months, or with fine or with both.

11. A license for the sale of standard cloth shall be granted by such authority, in such form and subject to such conditions as the Local Government may prescribe by rules made under this Act.

Rule-making power. 12. (1) The Governor General in Council may make rules—

- (a) prescribing the powers and duties of the Controller,
- (b) prescribing the manner in which the Controller's orders shall be published or served, as the case may be, and
- (c) generally giving effect to the provisions of this Act.

(2) The Local Government shall, if standard cloth is sold in the province, make rules prescribing the authority by which, the form in which and the conditions under which, any license or class of licenses for the sale of standard cloth shall be granted.

(3) Rules made under this Act shall be published in the Gazette of India or the local official gazette, as the case may be, and on such publication shall have effect as if enacted in this Act.

Protection for acts done under the Act. 13. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Powers of Act to be cumulative. 14. All powers given by this Act shall be in addition to and not in derogation of any other powers conferred by or under any enactment, and all such powers may be exercised in the same manner and by the same authority as if this Act had not been made.

THE COTTON DUTIES ACT, 1896.

(ACT II OF 1896.)

[Passed on the 3rd February, 1896.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1894 1896	XVII II	Cotton Duties Do.	Rep., Act II of 1896. Am., Act VIII of 1896. .. Act IV of 1914. .. Act X of 1914.

An Act to provide for the Imposition and Levy of certain Duties on Cotton Goods.

WHEREAS it is expedient to repeal the Cotton Duties Act, 1894, and XVII of 1894. to impose certain duties on cotton goods; It is hereby enacted as follows:—

PRELIMINARY.

Title, extent and commencement. 1. (1) This Act may be called the Cotton Duties Act, 1896.

(2) It extends to the whole of British India; [1]*

[1](3) * * *

XVII of 1894.

Repeal. 2. (1) The Cotton Duties Act, 1894, is hereby repealed.

(2) But all the provisions in respect of drawback contained in sections 17 to 24 of that Act shall be deemed to be in force in respect of all duty paid thereunder, and all sums recoverable, liabilities incurred, officers appointed or authorised, warehouses licensed and rules and directions made under that Act shall, so far as may be, be deemed respectively to be recoverable, and to have been incurred, appointed or authorised, licensed and made under this Act.

Definitions.

3. In this Act, unless there be something repugnant in the subject or context,—

VIII of 1878.

(1) "the Principal Act" means the Sea Customs Act, 1878:

(2) "Chief Customs Authority" means, in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the [2] United Provinces of Agra and Oudh, [2] the Board of Revenue; in the Presidency of Bombay outside Sind, the Commissioner of Customs; in Sind, the Commissioner; in the Punjab and Burma, the Financial Commissioner; and elsewhere the Local Government or such officer as the Local Government may, by notification in the official Gazette appoint in this behalf by name or in virtue of his office:

(3) "Collector" means—

(a) at Calcutta, Bombay, Madras, Rangoon and Karachi, the Collector of Customs, and

(b) in any other place, the Collector or Deputy Commissioner of the District or such other officer as the Local Government may appoint in this behalf, and includes

(c) every officer for the time being duly authorised by the Local Government to perform all or any of the duties of a Collector under this Act:

(4) "cotton yarn" or "yarn" means yarn wholly or partly composed of cotton fibres:

(5) "cotton goods" or "goods" includes all tissues and other articles (except yarn and thread), woven, knitted or otherwise manufactured, wholly or partly, from cotton yarn:

(6) "mill" means any building or place where cotton goods are woven, knitted or otherwise manufactured by machinery moved otherwise than by manual labour, and includes every part of such building or place:

(7) "warehouse" means a place licensed for the storage of goods under this Act, and includes every public or private warehouse duly appointed or licensed under section 15 or 16 of the Principal Act, or under

XXI of 1887, section 2 of the Inland Bonded Warehouses Act, [3] 1887:

(8) "customs port," "foreign port," "vessel" and "master" have respectively the meanings defined for them in the Principal Act.

Leg. Changes:—[1] The word "and" after sub-section (2) and sub-section (3) were repealed by Act X of 1914. [2] Substituted for "North-Western Provinces and the Chief Commissioner of Oudh" by the United Provinces (Designation) Act, VII of 1909, S. 2. [3] See now the Inland Bonded Warehouses Act, VIII of 1896, S. 3 (2) of which directs that this reference shall be read as if it were made to that Act.

Performance of duties of Customs-officers by subordinate officers.

4. The officers subordinate to a Collector shall, unless the Local Government shall otherwise so direct, for the purposes of this Act, perform the duties imposed and exercise the powers conferred upon officers of Customs under the Principal Act.

PART I.

EXCISE.

Application of Principal Act.

Modifications to be made in Principal Act as applied to this Part.

5. In the application of the Principal Act or any particular section or sections thereof to this Part, the following modifications shall be made therein, namely :—

- (a) " the owner of the goods " shall include the managing agent or other principal officer of a mill ;
- (b) for " the bill-of-entry " or " shipping-bill " shall be substituted " the return required by this Act " ;
- (c) every reference to a warehouse, or warehousing, shall be construed as referring to a " warehouse " as hereinbefore defined.

Duty.

Imposition of duty on cotton goods produced in British Indian mills.

6. There shall be levied and collected at every mill in British India, upon all cotton goods produced in such mill, a duty at the rate of $3\frac{1}{2}$ per centum on the value of such goods.

Explanation.—Goods are said to be produced within the meaning of this section when they are issued out of the premises of the mill. But, in the case of any mill in which the goods are chiefly or largely made up and sold otherwise than as piece-goods, the Governor General in Council may direct that goods shall be reckoned as produced when they are issued out of the weaving section or sections of the mill.

Power to Governor General in Council to fix tariff values of such goods.

7. (1) The Governor General in Council may, from time to time, by notification in the Gazette of India, fix, for the purpose of levying the said duties, tariff values of all such goods as aforesaid or of any particular description or descriptions thereof, and alter any tariff values for the time being in force.

(2) Such tariff value shall, for the purposes of this Act, be deemed to be the " real value " of the goods to which it applies, but save as aforesaid all goods shall be assessed under this Act at their real value.

(3) For the purposes of this Act the real value shall be deemed to be—

- (a) the wholesale cash price, less trade discount for which goods of the like kind and quality are sold or are capable of being sold at the time and place of production, without any abatement or deduction whatever, except of the amount of the duties payable on the production thereof ;
- (b) where such price is not ascertainable, the cost at which goods of the like kind and quality could be delivered at such place, without any abatement or deduction, except as aforesaid.

8. (1) The owner of every mill shall prepare and deliver, or cause to be prepared and delivered, to the Collector each month a return of all the cotton goods produced at his mill during the preceding month; and shall subscribe a declaration of the truth of such return at the foot thereof.

Delivery of monthly returns of goods produced by mill-owners.

(2) Unless otherwise prescribed by any rules under this Act, every such return shall state for each description of goods the quantity produced during the period to which the return relates, and the real value of such goods.

(3) Every such return shall also contain such further information and be in such form and be subject to such conditions as to verification and otherwise as may be prescribed by any rules under this Act.

(4) Each return shall be delivered to the Collector or posted to his address within three working days, and at most within seven days, of the period to which it relates; * * * [1]

Explanation.—"Working day" in this sub-section means every day except a public holiday as defined in section 25 of the Negotiable Instruments Act, 1881.

XXVI of 1881.

9. (1) The Collector shall assess the duties payable in respect of the period to which the return relates, and unless the amount thereof is immediately tendered shall cause a notice, in such form as may be prescribed by any rules under this Act, to be served on the owner requiring him to make payment of the amount assessed within ten days of the date of service of the said notice.

(2) A notice under sub-section (1) may be served on the owner of a mill by delivering or tendering to him or his agent at his ordinary place of business a copy of the notice, or, if this cannot be conveniently done, by fixing a copy of the notice on one of the outer doors of the mill.

Application of certain sections of Principal Act to assessment and recovery of duty under this Act.

10. Sections 31 to 34, 37, and 39 to 41, all inclusive, of the Principal Act, shall apply to the assessment and recovery of the duties imposed by this Act:

Provided that the rate of duty and the tariff valuation applicable to any goods which have not been warehoused as hereinafter provided shall be those in force at the time when the goods were produced, and not when the return was delivered as provided by the said section 37.

11. (1) If any duty payable under this Act is not paid within the time fixed by any such notice as aforesaid for the payment thereof, the Collector may, in lieu thereof, recover any sum not exceeding double the amount of duty so unpaid, which he shall, in his discretion, think it reasonable to require.

Recovery of unpaid duty.

Leg. Changes:—[1] The words "and the first of such returns shall be made for the month of February 1896, and shall include all goods produced since the commencement of this Act" were repealed by Act X of 1914.

(2) All sums recoverable under sub-section (1) shall be recovered in the manner provided in Act II of 1886, section 30, sub-sections (1), (2) and (3), with respect to the sums therein referred to.

Warehousing.

12. (1) The [1] Collector may from time to time license any room or place as a warehouse for the storage of cotton goods, and for the purposes of this Act every such room or place shall be deemed to be a warehouse and to have been duly licensed under the Principal Act.

Licensing of warehouses for storage of goods and fees for same.

(2) There shall be payable in respect of every such warehouse such and the like licensing fees and other payments as may for the time being be payable in respect of a private warehouse licensed under the Principal Act :

Provided that the [1] Collector may remit the whole or any part of such fees or other payments in respect of any particular warehouse.

13. (1) The owner of any mill may apply for leave to deposit in a warehouse any goods in respect of which duty has become leviable under section 6 but has not yet been assessed under section 9.

Permission to deposit goods in warehouses.

(2) Such application shall be in writing signed by the applicant, and shall be in such form as may be prescribed by the [1] Collector.

14. All the provisions of Chapter XI of the Principal Act, so far as the same are applicable to imported goods of a similar description, shall apply to all goods in respect of which an application has been made under section 13.

Application to goods so deposited of provisions of Chapter XI of Principal Act.

15. When any goods have been deposited in a warehouse, the quantity and particulars thereof shall be specified as so deposited in the return made under section 8 for the period in which the goods were produced, or in a separate return for that same period, and the said goods shall be deducted in the assessment and collection of duty.

Exemption from assessment of goods so deposited.

Inspection.

16. (1) The Collector, or any officer duly appointed by the [2] Chief Customs Authority [2] in that behalf, shall have free access at all reasonable times during working hours to any mill and, subject to any order of the [2] Chief Customs Authority [2] in this behalf, to any part of any mill.

Power to Collector to inspect mills and take copies of records and accounts.

(2) Any such officer may at any time, with or without notice to the owner, examine the working records, sale records, and accounts of any mill, and take copies of, or extracts from, all or any of the said records or accounts, for the purpose of testing the accuracy of any return, or of informing himself as to any particulars regarding which information is required for the purposes of this Act or any rules thereunder.

Leg. Changes :—[1] The word "Collector" was substituted for the words "Chief Customs Authority" by Act IV of 1914. [2] The words "Chief Customs Authority" were substituted for the words "Local Government" by Act IV of 1914.

(3) Any mill-owner may object to submitting to any officer under the rank of a Collector any record or account containing the description or formulæ of any trade process :

but, if he objects to the inspection of any record or account by such an officer on the ground of its containing such description or formulæ, he must submit his objection in writing to the officer for transmission to the Collector, and the officer may then and there seal up the record of account pending the orders of the Collector.

Information acquired to be deemed official secrets within meaning of Act XV, 1889.

17. (1) All such copies and extracts, and all other information acquired by any such officer on the inspection of any mill or warehouse, shall be regarded as strictly confidential, and shall be deemed to be official secrets.

(2) If any such officer shall disclose to any person other than a superior officer any such official secret as aforesaid without the previous consent in writing of the Chief Customs Authority, he shall be guilty of a breach of official trust, and shall, upon conviction thereof, be punishable in the manner provided by section 4 of the Indian Official Secrets Act,

XV of 1889, 1889.

(3) The restriction imposed by section 5 of the last-mentioned Act shall not apply to a prosecution for a breach of an official trust under this Act.

Export and Drawback.

18. If any dutiable goods are exported by sea to any foreign port before the return in respect of them has been delivered to the Collector under section 8, the owner of the mill in which they were produced may apply in writing to the Customs Collector at the port of shipment, who, on being satisfied that such goods have actually been shipped for export, shall issue a certificate stating the quantity and particulars of such goods and that they have actually been so shipped.

Grant of certificate when dutiable goods are to be exported to foreign port.

19. When any certificate has been applied for under section 18, the quantity and particulars of the goods mentioned in the application shall be specified as so shipped in the return made under section 8 for any period not later than that in which they were shipped, and, if the Collector is satisfied that the said goods have been so shipped and that the conditions (if any) imposed by rules under this Act have been complied with, the said goods shall be deducted in the assessment and collection of duty.

When certificate granted, goods to be exempt from duty.

20. (1) When any dutiable goods are exported by sea from any customs port to any foreign port, the exporter may apply to the Customs Collector at the port of shipment for the repayment as drawback of any duty which may have been paid under this Act in respect of such goods.

Repayment of duty in case of certain cotton goods exported to foreign ports.

(2) In every application made under sub-section (1) the applicant must state the description or descriptions of the goods in respect of which drawback is claimed, the mill at which the goods were produced,

and, as nearly as possible, the dates on which they were produced, and such further particulars, if any, as may be prescribed.

21. (1) The Drawback shall be allowed by the Collector if it is shown to his satisfaction that the goods in respect of which drawback is applied for have paid duty within twelve months of the date on which they are shipped for export, and that the conditions (if any) imposed by rules under this Act have been complied with.

When such refunds may be granted.

(2) Drawback shall not cease to be admissible merely by reason of the goods in respect of which it is applied for having been bleached, dyed, coloured or painted after having been produced within the meaning of section 6.

Power to prohibit repayment of duty in case of exportation to certain ports.

22. (1) The Governor General in Council may, from time to time, by notification in the Gazette of India, prohibit the payment of drawback on the exportation of cotton goods to any specified foreign ports.

(2) Any notification already made under section 22 of the Cotton Duties Act, 1894, shall be deemed to have been made under this section. XVII of 1894.

No repayment of duty to be granted in certain cases.

23. Notwithstanding anything herein contained, no drawback shall be allowed in respect of any cotton goods on which duty has been paid—

(a) when the goods are of less value than the amount of drawback claimed, or

(b) when the claim is for drawback amounting to less than five rupees in respect of any single shipment.

Application of sections 51 and 52 of Principal Act to claims under this Act.

24. Sections 51 and 52 of the Principal Act shall apply to every claim for drawback under this Act.

Offences and Penalties.

25. The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the second column thereof with reference to such offences respectively :—

1. Contravening any rule made under this Act.

Penalty not exceeding five hundred rupees.

2. Concealing or attempting to conceal, or knowingly permitting or procuring to be concealed, any goods liable to duty under this Act with intent to evade payment of the duty or any part thereof.

Such goods shall be liable to confiscation, and every person convicted of the offence shall be liable to a penalty not exceeding three times the value of the goods.

3. Omitting to make any return required by section 8 or refusing to sign or complete the same.

Penalty not exceeding one thousand rupees.

4. Making and delivering any such return containing any statement not true to the best of the information and belief of the person making the same.

The penalty provided in the Indian Penal Code, section 199, for making a false statement in a declaration.

XLV of 1860.

5. Altering or falsifying any record or book of account kept in the mill with the intention of defrauding the revenue.

6. Omitting, without reasonable cause, to keep samples as provided in section 28.

7. Omitting to keep such proper records and books of accounts as may be prescribed by any rule under this Act.

8. Omitting to make and deliver any return which by any rule under this Act ought to have been made and delivered.

9. Intentionally obstructing any Collector or other officer in the exercise of any powers given under this Act.

10. If any goods in respect of which a certificate has been obtained under section 18, or any goods on the entry of which for export drawback has been paid, are not duly exported or are unshipped or relanded at any customs port, not having been duly relanded or discharged under the provisions of the Principal Act.

11. If any goods are entered for drawback which are of less value than the drawback claimed.

12. If any goods are found concealed in any place, box or closed receptacle in any mill and are not duly accounted for to the satisfaction of the Collector.

13. If any goods are found in any mill in excess of the quantity entered in the return or not corresponding with the statement therein contained.

14. If when any cotton goods are passed by tale or by package any omission or misdescription thereof tending to injure the revenue be discovered.

15. If any Collector or officer subordinate to a Collector does any act or is guilty of any omission in contravention of this Act or of any rule or order made thereunder; or, with intent to cause injury or annoyance to any person, vexatiously and unnecessarily makes use of any power conferred upon him under this Act.

16. The offences described in the Principal Act, section 167, Schedule Nos. 41—53, both inclusive, in reference to warehousing of dutiable goods.

The penalty provided in the Indian Penal Code, section 465, for the commission of forgery.

A penalty for each offence not exceeding two hundred rupees.

Penalty not exceeding five hundred rupees and a further penalty of twenty rupees for every day after the date of the conviction during which the offence is continued.

Penalty not exceeding one thousand rupees.

Imprisonment for a term not exceeding six months, or fine not exceeding one thousand rupees, or both.

Such goods, together with any vessel used in the unshipping or relanding them, shall be liable to confiscation, and the master of the vessel from which such goods are so unshipped or relanded, and any person by whom or by whose orders or means such goods are so unshipped or relanded, or who aids or is concerned in such unshipping or relanding, shall be liable to a penalty not exceeding three times the value of such goods, or not exceeding one thousand rupees.

Such goods shall be liable to confiscation.

Such goods shall be liable to confiscation.

Such goods shall be liable to confiscation or to be charged with such increased duty as the Chief Customs Authority may direct.

The person guilty of such omission or misdescription shall be liable to a penalty not exceeding ten times the amount of duty which might have been lost to the Government by such omission or misdescription, unless it be proved to the satisfaction of the Collector or other officer that the variance was accidental.

Such Collector or officer shall be liable on conviction to a fine not exceeding five hundred rupees.

The penalties prescribed in the same Schedule in respect of such offences respectively.

Magistrates having jurisdiction.

26. All offences against this Act may be tried summarily by a District or Presidency Magistrate or a Magistrate of the First Class.

Application of section 168 of Principal Act to cases of confiscation under this Act.

27. Section 168 of the Principal Act shall apply to all cases of confiscation of goods under this Act.

Miscellaneous.

28. (1) The owner of every mill shall, in the case of any goods other than those for which tariff values have been fixed under section 7, take a sample or samples of such goods, at the time of manufacturing the same, and shall preserve such samples for reference for at least six months after the said goods are produced.

(2) Such samples shall be at all times available for inspection by the Collector, or by any officer appointed under section 16; and an examination thereof shall, if the goods themselves cannot conveniently be examined, be deemed to be an examination of the goods within the meaning of section 31 of the Principal Act.

(3) The Governor General in Council may define by rule what shall in any specified case be a sufficient sample for the purposes of this section.

29. (1) The Collector or any officer appointed under section 16 may at any time take samples of any goods for examination or for ascertaining the value thereof, or for any other necessary purpose.

(2) The owner may when required to deliver any sample to an officer appointed under section 16 seal up such sample in a cover addressed to the Collector; and in such case the said officer shall deliver such cover intact to the Collector.

(3) Every sample shall, if practicable, be restored to the owner, or, at his option, sold by the Collector, and the proceeds accounted for to the owner.

Records and accounts to be kept by mill-owners.

30. The owner of every mill shall keep such records and books of account as may be prescribed by any rules under this Act.

31. The owner of every mill or place where cotton yarn is spun by machinery moved otherwise than by manual labour shall make periodical returns to the Collector of the quantity and description of all such yarns, in such form, with such particulars, and at such intervals, as may be prescribed by any rule under this Act.

Mill-owners to make periodical returns of cotton yarn spun by machinery.

Application of certain provisions of Principal Act to proceedings under this Act.

32. All the provisions of Chapter XVII of the Principal Act, except sections 169, 170, 177, 182, 184, 185, 187, 190, 191 and 193, shall apply to all proceedings under this Act.

Power to Local Government to reverse or modify orders under this Act.

33. The Local Government may, on the application of any person aggrieved by any decision or order passed under this Act, reverse or modify such decision or order.

Certain provisions of Principal Act to be incorporated in this Act.

VIII of 1894. Application of section 10, Act VIII, 1894, to duties under this Act.

Power to Governor General in Council to make rules.

34. The provisions of sections 198, 201, 204, 205 and 206 of the Principal Act shall be deemed to be incorporated in this Act.

35. The provisions of section 10 of the Indian Tariff Act, 1894, shall apply to duties on cotton goods imposed under this Act.

36. (1) The Governor General in Council may from time to time make rules under this Act,—

- (a) prescribing the form of any return required by or under this Act and the particulars to be contained therein respectively, and the manner in which the same is to be verified, and all such other conditions in respect thereof as may be necessary ;
 - (b) requiring returns of yarns spun ;
 - (c) prescribing the form of the notice to be issued by the Collector under section 9 ;
 - (d) regulating the inspection of mills, and the powers and duties of Collectors and other officers in respect thereof ;
 - (e) regulating the provision of warehouses under this Act, and the deposit and discharge of goods therein and therefrom, and the powers and duties of the Collector in respect thereof ;
 - (f) prescribing the records and books of account to be kept by owners of mills under this Act ;
 - (g) prescribing the conditions under which alone exemption from duty and repayment as drawback shall be allowed under sections 19 and 21 ; and
 - (h) generally, for carrying into effect the provisions of this Act.
- (2) The application of any such rule may be confined to any place or places specified therein.

PART II.

INLAND CUSTOMS DUTIES.

VIII of 1894. Levy of duties on cotton goods passing into British India from foreign territory.

37. (1) Duties of customs shall be levied at the rates for the time being prescribed in the Indian Tariff Act, 1894, upon cotton goods passing into British India out of any territory declared, under the power hereinafter in this section conferred, to be foreign territory.

(2) The Governor General in Council may, by notification in the Gazette of India, declare that any territory situated within or bordering on, but not forming part of, British India shall be deemed, for the purposes of this section, to be foreign territory.

(3) The Governor General in Council may, from time to time, by notification in the Gazette of India, prohibit or restrict the bringing of cotton goods into British India from any such foreign territory, or prescribe the routes by which alone they may be brought.

(4) The provisions of section 19-A of the Principal Act shall apply to all goods brought or attempted to be brought into British India in contravention of any such notification.

Application of provisions of Principal Act as to drawback to goods taxed under this Part.

38. The provisions of the Principal Act as to drawback on export shall apply to all goods upon which duty has been paid under this Part.

PART III.

TRANSITORY PROVISIONS.[1]

THE COURT FEES ACT, 1870.

(ACT VII OF 1870.)

[Passed on the 11th March, 1870.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1848	XVII	Stamp Duties, Madras	Rep. Act VII of 1870.
1858	XLI	Stamp Duties, Bengal	Rep. Act XVIII of 1869.
1860	XXXVI	Stamps	Rep. Act X of 1862.
1862	X	Stamp Duties	Rep. Act VII of 1870.
1865	XVIII	Do.	Do.
1867	XXVI	Do.	Rep. Act X of 1877.
1870	VII	Court Fees	Rep. in part, Act XIV of 1870. Do. " VIII of 1871. Do. " XIII of 1889. Do. " VIII of 1890. Rep. in part (in Punjab), Act XVII of 1887 ; Do. and Amended Act XX of 1870 ; Act VI of 1889, S. 18 ; Act XII of 1891 ; Act V of 1908. Amended, Act XV of 1872, S. 2 ; " XIII of 1875, S. 6 ; " VII of 1889, S. 13 ; " XI of 1899, Ss. 2, 8 ; " X of 1901 ; " VI of 1905 ; " VII of 1910, S. 2 (1) ; " XIV of 1911 ; " XVII of 1914 ; " XXIV of 1917. (in Punjab), Act XVIII of 1884, S. 71 (as amended by Act XXV of 1899, S. 6 ; and by Act IX of 1900) ; (in Lower Burma), Act XI of 1889, S. 84 ; " VI of 1900, S. 47 ; (in Upper Burma), Reg. I of 1896, S. 36 ; Reg. V of 1903 ; (in Bengal), Ben. Act III of 1898, S. 7.

Leg. Changes:—[1] Ss. 39 to 42, being Transitory Provisions, were repealed by Act X of 1914.

CHAPTER I.

PRELIMINARY.

- Short title.** 1. This Act^(a) may be called the Court Fees Act, 1870.
- Extent of Act.** It extends to the whole of British India ;
- Commencement of Act.** And it shall come into force on the first day of April, 1870.
- "Chief Controlling Revenue authority" defined.** [1] 2. In this Act, unless there is anything repugnant in the subject or context, "Chief Controlling Revenue-authority" means—
- (a) in the Presidency of Fort St. George [2] the Presidency of Fort William in Bengal [2] and the territories respectively under the administration of the Lieutenant-Governors of [3] Bihar and Orissa [3] and the North-Western Provinces and the Chief Commissioner of Oudh—the Board of Revenue ;
 - (b) in the Presidency of Bombay, outside Sindh and the limits of the town of Bombay—a Revenue Commissioner ;
 - (c) in Sindh—the Commissioner ;
 - (d) in the Punjab and Burma, including Upper Burma—the Financial Commissioner ; and
 - (e) elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf.

* * * *

CHAPTER III.

FEES IN OTHER COURTS AND IN PUBLIC OFFICES.

- Fees on documents filed, etc., in Mofussil Courts or in public offices.** 6. Except in the Courts hereinbefore mentioned, no document (b) of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed (c), exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.
- * * * *
- Written examinations of complainants.** 18. When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police-officers may arrest without a warrant, and who has not already presented a petition on which

Leg. Changes :—[1] S. 2 of Act VII of 1870 was repealed by Act XIV of 1870 and the present section was inserted by Act X of 1901, S. 2. [2] Inserted by Act XXIV of 1917. [3] Substituted by Act XXIV of 1917.

Case-law :—(a) For object of Act, see 82 M. 305 ; for method of construction, 29 A. 749. (b) *E.g.*, a written statement claiming a set off, 15 M. 29 ; 8 A. 396 ; 13 B. 672 ; a certificate of guardianship, 12 C. 542 ; but not an application by a purchaser for sale certificate, 13 B. 670. (c) For meaning of, see 20 A. 11.

a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure, the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment.^(a)

Exemption of certain documents. 19. Nothing contained in this Act shall render the following documents chargeable with any fee :

- * * * *
- xiv. First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.
 - xv. Bail-bonds in criminal cases (b), recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.
 - xvi. Petition, application, charge or information respecting any offence, when presented, made or laid to or before a Police-officer, or to or before the Heads of Villages or the Village Police, in the territories respectively subject to the Governors in Council of Madras and Bombay.
 - xvii. Petition by a prisoner, or other person in duress or under restraint of any Court or its officers^(c).
 - xviii. Complaint of a public servant (as defined in the Indian Penal XLV of 186 Code), a municipal officer^(d), or an officer or servant of a Railway Company.
- * * * *
- xx. Application for the payment of money due by Government to the applicant.
- * * * *

CHAPTER IV.

PROCESS-FEES.

Rules as to costs of processes.

20. The High Court shall, as soon as may be, make rules as to the following matters :—

- i. the fees chargeable for serving and executing processes (e) issued by such Court in its appellate jurisdiction, and by the other Civil [1] and Revenue [1] Courts established within the local limits of such jurisdiction ;

Leg. Changes :—[1] The words “and Revenue” are repealed in the Punjab by the Punjab Act XVII of 1887.

Case-law :—(a) S. 31, Court Fees Act, inapplicable to wrongful restraint, as offence is one where police may arrest without warrant, though S. 18 make specific mention of that offence, 1 Weir 721. (b) Are exempt from Court-fees but not the bonds given by sureties, Rat.Un.Cr.O. 126. (c) But a petition from an accused person in his defence, at least in summons cases, appears to be liable to the payment of a Court-fee, U.B.R. (1892—1896), Vol. I, 9. (d) No process fee is leviable under S. 19 on complaints made by Municipal officers and the accused are not liable to refund what was illegally levied from the complainants as such fees, 16 M. 423. (e) But not a commission issued to an Amin to make a local investigation, 17 O. 281.

ii. the fees chargeable for serving and executing processes issued by the Criminal Courts, established within such limits in the case of offences ^(a) other than offences for which police-officers may arrest without a warrant; and

iii. the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may from time to time alter and add to the rules so made.

All such rules, alterations and additions shall, after being confirmed by the Local Government and sanctioned by the Governor General of India in Council, be published in the local official Gazette, and shall thereupon have the force of law.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

21. A table in the English and Vernacular languages showing the fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

Confirmation and publication of rules.
Tables of process-fees.
Number of peons in District and subordinate Courts.

22. Subject to rules to be made by the High Court and approved by the Local Government and the Governor General of India in Council,

every District Judge ^(b) and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes ^(c) issued out of his Court and each of the Courts subordinate thereto.

CHAPTER V.

OF THE MODE OF LEVYING FEES.

Collection of fees by stamps.

25. All fees referred to in section 3 or chargeable under this Act shall be collected by stamps ^(d).

26. The stamps used to denote any fees chargeable under this Act shall be impressed or adhesive, or partly impressed and partly adhesive, as the Governor General ^(e) of India in Council may, by notification in the Gazette of India, from time to time, direct.

Rules for supply, number, renewal and keeping accounts of stamps.

27. The Local Government may, from time to time, make rules for regulating—

(a) the supply of stamps to be used under this Act;

Case-law :—(a) S. 20, cl. 2, applies to fees for processes issued in the case of offences; an order for payment of maintenance is not a conviction for an offence and an application for maintenance cannot be dismissed merely because the applicant failed to pay process-fees as ordered by the Court, 16 M. 234; 11 C.P.L.R. 14. (b) 22 C. 596. (c) And also of warrants of arrest or of attachment and distress, *ibid.* (d) Full duty made up by number of stamps of smaller value, 17 W.R. 220; 16 W.R. 155. (e) Cannot direct that words "Court fees" should appear on stamps, 19 B. 145.

- (b) the number of stamps to be used for denoting any fee chargeable under this Act ;
- (c) the renewal of damaged or spoiled stamps ; and
- (d) the keeping accounts of all stamps used under this Act :

Provided that, in the case of stamps used under section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Stamping documents received. 28. No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

But, if any such document is through mistake (a) or inadvertence (b) received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped (c) as he may direct ; and, on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

Amended document. 29. Where any such document is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

Cancellation of stamp. 30. No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Such officer (d) as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

CHAPTER VI.

MISCELLANEOUS.

Repayment of fees paid on applications to Criminal Courts. 31. i. (e) Whenever an application or petition containing a complaint or charge of an offence, other than an offence for which police-officers may arrest without warrant, is presented to a Criminal Court, the Court, if it convict the accused person, shall, in addition (f) to the penalty

Case-law :—(a) Which may be one of law, 24 M. 331, 332. (b) Of the Court and not of the party, 28 A. 310 ; 20 M. 319, 321 ; but see 29 A. 749, F.B. (c) Opportunity to be given for affixing proper stamp though after period of limitation, 29 A. 749, F.B. ; 27 B. 390 ; 31 C. 75 ; 24 M. 331. (d) Who has also power to refuse to punch, 6 C.W.N. 75. (e) Applicability, 7 M. 345 ; 1 Weir 721. (f) But not out of the fine imposed on accused, 1 L.B.R. 309.

imposed upon him, order (a) him to repay to the complainant the fee paid (b) on such application or petition.

ii. In the case mentioned in section 18, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, if any, paid by the latter for the examination.

iii. When the complainant has paid fees for serving processes (c) in either of the cases mentioned in the first and second paragraphs of this section, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay such fees to the complainant.

iv. All fees ordered to be repaid under this section may be recovered (d) as if they were fines imposed by the Court.

* * * * *

Admission in criminal cases of documents for which proper fee has not been paid. 33. Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section 4 or section 6 shall be deemed to prohibit such filing or exhibition.

[1] 35. (1) The Local Government may from time to time make rules for regulating the sale of stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

(2) All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

(3) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale (e) any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

36. The Governor General of India in Council may, from time to time by notification in the Gazette of India, reduce or remit, in the whole or in any part of British India, all or any of the fees mentioned in the first and second schedules to this Act annexed,

and may in like manner cancel or vary such order.

Leg. Changes :—[1] Substituted by Act XII of 1891.

Case-law :—(a) Appellate Court cannot set aside such order, 31 M. 547. (b) But not *illegally* levied, 16 M. 493. (c) Costs and other expenses incurred by complainant, Legality of order for payment of, 24 M. 805. (d) Order under S. 31 is integral part of sentence and is fine, 22 M. 158; but see 26 M. 421; 29 M. 128 and 20 C. 687. (e) Including exchange of stolen stamps by thief for money, 24 M. 819; though not exchange of stamps of equal value, 30 C. 921.

SCHEDULE I.

Ad valorem fees.

Number.		Proper Fee.
* * *	* * *	* * *
6. Copy or translation of a judgment or order not being, or having the force of, a decree.	<p>When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or Office, or by any other Judicial or Executive Authority—</p> <p>(a)—If the amount or value of the subject-matter is fifty or less than fifty rupees.</p> <p>(b)—If such amount or value exceeds fifty rupees.</p> <p>When such judgment or order is passed by a High Court.</p>	<p>Four annas.</p> <p>Eight annas.</p> <p>One rupee.</p>
8. Copy of any document (a) liable to stamp-duty under the Indian Stamp Act, 1879, when left by any party to a suit or proceeding in place of the original withdrawn.	<p>(a)—When the stamp-duty chargeable on the original does not exceed eight annas.</p> <p>(b)—In any other case. ...</p>	<p>The amount of the duty chargeable on the original. I of 1879.</p> <p>Eight annas.</p>
9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or office, or from the office of any chief officer charged with the executive administration of a Division.	For every three hundred and sixty words or fraction of three hundred and sixty words.	Eight annas.

Case-law :—(a) See 11 B, 526.

SCHEDULE II.

Fixed Fees.

Number.		Proper Fee.
1. Application or petition.	(a)— * * *	* * *
	or when presented to any Civil, Criminal or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer, or of any other document on record in such Court or Office.	One anna.
	(b)—When containing a complaint or charge of any offence other than an offence for which Police-officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any Criminal Court ;	
	or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or to any Revenue-officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act ;	Eight annas.
	(d)—When presented to a High Court.	Two rupees.
[1] 6. Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898, or the Code of Civil Procedure, 1908, [2] and not otherwise provided for by this Act. [2]	.....	Eight annas.

Leg.Changes.—[1] Substituted by Act XII of 1891. [2] The words "and not otherwise provided for by this Act" were inserted by Act XVII of 1914.

SCHEDULE II—(Concluded).

Number.		Proper Fee.
* * *	* * *	* * *
10. Mukhtarnama or Wakalatnama.	When presented for the conduct of any one case (a)—	
	(a)—to any Civil or Criminal Court other than a High Court, or to any Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (b) and (c) of this Number.	Eight annas.
	(b)—to a Commissioner of Revenue, Circuit or Customs or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority.	One rupee.
	(c)—to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority.	Two rupees.

THE CRIMINAL LAW AMENDMENT ACT, 1908.

(ACT XIV OF 1908.)

[Passed on the 11th December, 1908].

An Act to provide for the more speedy trial of certain offences and for the prohibition of associations dangerous to the public peace.

WHEREAS it is expedient to provide for the more speedy trial (b) of certain offences, and for the prohibition of associations dangerous to the public peace; It is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may be called the Indian Criminal Law Amendment Act, 1908.

(2) It extends to the Provinces of Bengal and of Eastern Bengal and Assam; but the Governor General in Council may, at any time, by notification in the Gazette of India, extend the whole or any Part thereof to any other Province.

Case-law:—(a) Meaning, 108 P.W.R. 1912. (b) Act does not enact complete rules of procedure; ordinary procedure, except where modified by Act, to be followed; High Court's power under Letters Patent, cl. 26, not modified by Act, (1912) M.W.N. 549; application of Act so as to result in accused's long detention in custody without access to legal advice not contemplated by legislature, 15 C.W.N. 593=11 Ind. Cas. 582.

(3) When extending Part I to any Province under sub-section (2) the Governor General in Council may declare the operation of the provisions of that Part relating to the constitution of the Special Bench to be subject to such modifications as may in the opinion of the Governor General in Council be necessary to adapt those provisions to the circumstances of that Province.

PART I.

SPECIAL PROCEDURE^(a).

2. (1) Where a Magistrate has taken cognizance of any offence specified in the Schedule, and it appears to the Application of Governor General in Council or to the Local Government that in the interests of peace and good order the provisions of this Part should be made to apply to proceedings in respect of such offence, the Governor General in Council, or the Local Government, with the previous sanction of the Governor General in Council, may make an order in writing to that effect, and may by such order direct that the provisions of this Part shall apply to such proceedings.

V of 1898. (2) No order shall be made under sub-section (1) in any case in which an order of commitment to the High Court or Court of Session has been made under the Code of Criminal Procedure, 1898 ; but, save as aforesaid, an order may be made in respect of any offence whether committed before or after the commencement of this Act, or, in the case of a province to which this Part is extended under section 1, before or after such extension.

11 & 12 Vict., c. 42, s. 25. 3. (1) On receipt of an order under section 2 the Magistrate who has taken cognizance of the offence, or any other Magistrate to whom the case has been transferred, shall proceed to enquire whether the evidence offered upon the part of the prosecution is sufficient to put the accused upon his trial for an offence specified in the Schedule, and shall for that purpose record on oath the evidence of all such persons as may be produced in support of the prosecution, and may record any statement of the accused if voluntarily tendered by him.

V of 1898. (2) Where before the commencement of proceedings under this Act the evidence of a witness has been recorded under the Code of Criminal Procedure, 1898, in the course of an inquiry into the same offence as that to which such proceedings relate, such evidence may be treated for the purposes of this Act as if it had been taken under sub-section (1).

4. The accused shall not be present during an inquiry under section 3, sub-section (1), unless the Magistrate so directs, nor shall he be represented by a pleader during any such inquiry, nor shall any person have any right of access to the Court of the Magistrate while he is holding such inquiry.

Case-law :—(a) Trial under this Act is subject to cl. 26, Letters Patent, and open to review on Advocate-General's certificate, 35 M. 397.

§. 11 ACT XIV OF 1908 (CRIM. LAW AMEND.). Crim. Law Amend.

5. When the evidence referred to in section 3 has been taken, the Magistrate shall, if he finds that it is not sufficient to put the accused upon his trial for an offence specified in the Schedule, record his reasons and discharge the accused, unless it appears to the Magistrate that the accused should be tried or committed for trial under the provisions of the Code of Criminal Procedure, 1898, for any other offence, in which case **V of 1898.** the Magistrate shall proceed accordingly.

6. When upon such evidence being taken the Magistrate is satisfied that it is sufficient to put the accused upon his trial for an offence specified in the Schedule, he shall—

- (a) frame a charge under his hand declaring with what offence the accused is charged,
- (b) make an order directing that the accused be sent to the High Court for trial, and
- (c) cause the accused to be supplied with a copy of the order and of the charge and of the evidence taken under section 3.

7. In framing any charge under section 6 the Magistrate may also frame a charge for any offence not specified in the Schedule with which the accused may be charged at the same trial, and the procedure of this Act shall apply to any such charge.

8. When an order for trial has been made under section 6, the Magistrate shall send the order together with the charge, the record of inquiry and anything which is to be produced in evidence to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

9. (1) The Magistrate may, if he thinks fit, summon and examine supplementary witnesses after the order for trial and before the commencement of the trial.

(2) When the Magistrate examines witnesses under sub-section (1) he shall forthwith cause the accused to be supplied with a copy of the evidence of such witnesses.

10. The accused may at any time before his trial give to the Clerk of the Crown or other officer as aforesaid a list of the persons whom he wishes to be summoned to give evidence on his trial.

11. (1) All persons sent for trial to the High Court under this Act shall be tried by a Special Bench of the Court composed of three Judges.^(a)

(2) No trial before the Special Bench shall be by jury.

(3) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

Case-law :—(a) Barristers only have right of audience before Special Tribunal, 13 C.W.N. 605.

12. No person who has been remanded to custody in the course of proceedings under this Act shall be released on bail (a) under the provisions of section 497 of the Code of Criminal Procedure, 1898, if there appear to be sufficient grounds for further inquiry into the guilt of such person.(b)

13. Notwithstanding anything contained in section 33 of the Indian Evidence Act, 1872, the evidence of any witness taken by a Magistrate in proceedings to which this Part applies shall be treated as evidence before the High Court if the witness is dead or cannot be produced and if the High Court has reason to believe that his death or absence has been caused in the interests of the accused.

14. (1) The provisions of the Code of Criminal Procedure, 1898, shall not apply to proceedings taken under this Part in so far as they are inconsistent with the special procedure prescribed in this Part.(c)

(2) When holding a trial under section 11, the Special Bench shall apply the provisions of Chapter XXIII of the said Code with such modifications as may appear necessary to adapt those provisions to the case of a trial before the High Court without a jury.

PART II.

UNLAWFUL ASSOCIATIONS.

Definitions.

15. In this Part :—

(1) "association" means any combination or body of persons, whether the same be known by any distinctive name or not ; and

(2) "unlawful association" means an association—

(a) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts, or

(b) which has been declared to be unlawful by the Governor General in Council under the powers hereby conferred.

16. If the Governor General in Council is of opinion that any association interferes or has for its object interference with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the public peace, the Governor General in Council may, by notification in the official Gazette, declare such association to be unlawful.

17. (1) Whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

Case-law :—(a) High Court's power to grant bail not affected by Act, 37 C. 439=14 C.W.N. 516. (b) See 37 C. 412=14 C.W.N. 512. (c) Sessions Judge has no power to grant bail, 37 C. 412=14 C.W.N. 516.

ACT III OF 1911 (CRIMINAL TRIBES). **Criminal Tribes**

(2) Whoever manages or assists in the management of an unlawful association, or promotes or assists in promoting a meeting of any such association, or of any members thereof as such members, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

18. An association shall not be deemed to have ceased to exist by reason only of any formal act of dissolution or change of title, but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof.

THE SCHEDULE.

(See section 3.)

1. Any offence under the following sections of the Indian Penal Code of 1860. Code, namely :—

Chapter VI, sections 121, 121-A, 122, 123 and 124.

Chapter VII, sections 131 and 132.

Chapter VIII, section 148.

Chapter XVI, sections 302, 304, 307, 308, 326, 327, 329, 332, 333, 363, 364, 365 and 368.

Chapter XVII, sections 385, 386, 387, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 431, 435, 436, 437, 438, 440, 454, 455, 457, 458, 459 and 460.

Chapter XXII, section 506.

2. Any offence under the Explosive Substances Act, 1908; and VI of 1908.

3. Any attempt to commit or any abetment of any of the above offences.

THE CRIMINAL PROCEDURE CODE, 1898.

See VOLUME II.

THE CRIMINAL TRIBES ACT, 1911.

(ACT III OF 1911.)

[Passed on the 2nd March, 1911.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1843	XVIII	Thugs and Dacoits ...	Rep., Act VIII of 1863.
1848	III	Meaning of "Thug" and "Thuggee." ...	Rep., Act XVII of 1862.
1848	XI	Wandering Gangs of Thieves ...	Do.
1871	XXVII	Criminal Tribes ...	Rep. in pt., Act XVI of 1874.
			Rep., Act III of 1911.
1876	VII	Criminal Tribes (Amendment) ...	Do.
1897	II	Criminal Tribes Act Amendment ...	Do.
1911	III	Criminal Tribes ...	Rep. in pt., Act X of 1914.
			Am. in pt., Act XI of 1915.

An Act to amend the law relating to the registration, surveillance and control of Criminal Tribes.

WHEREAS it is expedient to amend the law relating to the registration, surveillance and control of criminal tribes ; It is hereby enacted as follows :—

Preliminary.

Short title and extent. 1. (1) This Act may be called the Criminal Tribes Act, 1911 ; and

(2) It extends to the whole of British India.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(1) " criminal tribe " means a tribe, gang or class of persons declared to be a criminal tribe by a notification under section 3 ;

(2) " prescribed " means prescribed by rules under this Act ; and

(3) " tribe," " gang " or " class " includes any part or members of a tribe, gang or class.

Notification of Criminal Tribes.

3. If the Local Government has reason to believe that any tribe, gang or class of persons is addicted to the systematic commission of non-bailable offences, it may, by notification in the local official Gazette, declare that such tribe, gang or class is a criminal tribe for the purposes of this Act.

Power to declare any tribe, gang or class a criminal tribe.

Registration of Members of Criminal Tribes.

4. The Local Government may direct the District Magistrate to make or to cause to be made a register of the members of any criminal tribe or of any part thereof within his district.

Registration of members of criminal tribes.

5. Upon receiving such direction, the District Magistrate shall publish a notice in the prescribed manner at the place where the register is to be made and at such other places as he may think fit, calling upon all the members of such criminal tribe, or of such part thereof as is directed to be registered,—

Procedure in making register.

(a) to appear at a time and place therein specified before a person appointed by him in this behalf ;

(b) to give to that person such information as may be necessary to enable him to make the register ; and

(c) to allow their finger-impressions to be recorded :

Provided that the District Magistrate may exempt any individual member of such criminal tribe or part thereof from registration.

6. The register, when made, shall be placed in the keeping of the Superintendent of Police, who shall, from time to time, report to the District Magistrate any alterations which ought in his opinion to be made therein, either by way of addition or erasure.

Charge of register.

7. (1) After the register has been placed in the keeping of the Superintendent of Police no person shall be added to the register, and no registration shall be cancelled except by, or by the order in writing of, the District Magistrate.

(2) Before the name of any person is added to the register under this section, the Magistrate shall give notice in the prescribed manner to the person concerned—

(a) to appear before him or a person appointed by him in this behalf, at a time and place therein specified ;

(b) to give him or such person such information as may be necessary to enable him to make the entry ; and

(c) to allow his finger-impressions to be recorded.

8. Any person deeming himself aggrieved by any entry made, or proposed to be made, in such register either when the register is first made or subsequently, may complain to the District Magistrate against such entry, and the Magistrate shall retain such person's name on the register, or enter it therein, or erase it therefrom, as he may see fit.

Power to take
finger-impressions at
any time.

9. The District Magistrate or any officer empowered by him in this behalf may at any time order the finger-impressions of a registered member of a criminal tribe to be taken.

Members of criminal
tribes to report
themselves or notify
residence.

10. (a) The Local Government may, by notification in the local official Gazette, [1] issue in respect of any criminal tribe [2] either or both of the following directions, namely, [2] that every registered member thereof shall, in the prescribed manner,—

(a) report himself at fixed intervals ; * [3]

(b) notify his place of residence and any change or intended change of residence (b) and any absence or intended absence from his residence.

Restriction of Movements of Criminal Tribes.

Procedure when
deemed expedient to
restrict movements
of, or settle, criminal
tribes.

11. (1) If the Local Government considers that it is expedient that any criminal tribe should be—

(a) restricted in its movements to any specified area, or

(b) settled in any place of residence it may report the case for the orders of the Governor General in Council.

(2) Every such report shall state—

(a) the nature and the circumstances of the offences in which the members of the criminal tribe are believed to have been concerned, and the reasons for such belief ;

Leg. Changes :—[1] Substituted by Act XI of 1915. [2] Added by Act XI of 1915. [3] Omitted by Act XI of 1915.

Case-law :—(a) Registered person absent from village without permission is liable to conviction, 20 P.R. 1908, Cr.=9 Cr. L J. 1. (b) A registered member of a Criminal tribe is not bound to notify a change of residence which is of a temporary character, as one for a day or two, under rule 8 (a) made by the Local Government, 16 A.L.J. 510.

- (ii) whether such criminal tribe follows any lawful occupation, and whether such occupation is in the opinion of the Local Government the real occupation of such criminal tribe, or a pretence for the purpose of facilitating the commission of crimes, and the grounds on which such opinion is based ;
- (iii) the area to which it is proposed to restrict the movements of such criminal tribe, or the place of residence in which it is proposed to settle it ; and
- (iv) the manner in which it is proposed that such criminal tribe shall earn its living within the restricted area or in the settlement, and the arrangements which are proposed to be made therefor.

Notification restricting movements of, or settling, tribe.

12. If, on the consideration of any such report, the Governor General in Council is satisfied—

- (a) that it is expedient to restrict the movements of such criminal tribe, or to settle it in a place of residence, and
- (b) that the means by which it is proposed that such criminal tribe shall earn its living are adequate,

he may authorize the Local Government to publish in the local official Gazette a notification declaring that such criminal tribe shall be restricted in its movements to the area specified or shall be settled in the place of residence specified, and the Local Government may publish a notification accordingly.

13. The Local Government may at any time by a like notification vary the terms of any notification published by it under section 12 by specifying another area to which the movements of the criminal tribe shall be restricted, or another place of residence in which it shall be settled.

Power to vary specified area or place of residence.

Verification of presence of members of tribe within prescribed area or place of residence.

14. Every registered member of a criminal tribe, whose movements have been restricted or which has been settled in a place of residence, shall attend at such place and at such time and before such person as may be prescribed in this behalf.

15. When the area to which the movements of a criminal tribe or any members thereof are restricted, or the place of residence in which a criminal tribe is settled is situated in a district other than that in which the register mentioned in section 4 was prepared, the register shall be transferred to the Superintendent of Police of the district in which the said area is situated, and the District Magistrate of the said district shall thereupon be empowered to exercise the powers provided in sections 7, 8 and 9.

Transfer of register in certain cases.

Settlements and Schools.

16. The Governor General in Council or the Local Government may establish industrial, agricultural or reformatory settlements and may place therein any criminal tribe or any part thereof, in respect of which a notification has been published under section 12.

Power to place tribe in settlement.

17. (1) The Local Government may establish industrial, agricultural or reformatory schools for children and may separate and remove from their parents or guardians and place in such schools the children of members of any criminal tribe in respect of which a notification has been published under section 12.

Power to place children in schools and to apprentice them.

(2) For every school established under sub-section (1), a Superintendent shall be appointed by the Local Government.

(3) The provisions of sections 18 to 22 (both inclusive) of the Reformatory Schools Act, 1897, shall, so far as may be, apply in the case of every school for children established under this section as if the Superintendent of such school were a Superintendent and the children placed in such school were youthful offenders within the meaning of that Act.

(4) For the purposes of this section the term "children" includes all persons under the age of eighteen and above the age of six years.

(5) The decision of the District Magistrate as to the age of any person for the purposes of this section shall be final.

Power of Local Government to discharge or remove persons from settlement or school.

18. The Local Government may at any time, by general or special order, direct any person who may be in any industrial, agricultural or reformatory settlement or school in the Province—

(a) to be discharged, or

(b) to be removed to some other like settlement or school in the province.

Power of Governor or General in Council to direct use of any settlement or school in British India for reception of persons.

19. The Governor General in Council may, by like order, direct that any person to whom the provisions of section 16 or section 17 are applicable may be placed in, or transferred to, any industrial, agricultural or reformatory settlement or school in any part of British India.

Rules.

Power to make rules.

20. (1) The Local Government may make rules to carry out the purposes and objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for and regulate—

(a) the form and contents of the register prescribed in section 4 ;

(b) the mode in which the notice prescribed in section 5 shall be published and the means by which the persons whom it concerns, and the village-headmen, village-watchmen and landowners or occupiers of the village in which such persons reside, or the agents of such landowners or occupiers, shall be informed of its publication ;

(c) the addition of names to the register and the erasure of names therein and the mode in which the notice prescribed in section 7 shall be given ;

- (d) the mode in which persons mentioned in section 10 shall report themselves, or notify their residence or any change or intended change of residence or any absence or intended absence ;
- (e) the nature of the restrictions to be observed by persons whose movements have been restricted by notification under section 12 or section 13 ;
- (f) the conditions as to holding passes under which persons may be permitted to leave the place in which they are settled or confined or the area to which their movements are restricted ;
- (g) the conditions to be inserted in any such pass in regard to—
 - (i) the places where the holder of the pass may go or reside ;
 - (ii) the persons before whom, from time to time, he shall be bound to present himself ; and
 - (iii) the time during which he may absent himself ;
- (h) (a) the place and time at which and the persons before whom members of a criminal tribe shall attend in accordance with the provisions of section 14 ;
- (i) the inspection of the residences and villages of any criminal tribe ;
- (j) the terms upon which registered members of criminal tribes may be discharged from the operation of this Act ;
- (k) the management, control and supervision of industrial, agricultural or reformatory settlements and schools ;
- (l) the works on which, and the hours during which, persons placed in an industrial, agricultural or reformatory settlement shall be employed, the rate at which they shall be paid, and the disposal, for the benefit of such persons, of the surplus proceeds of their labour ; and
- (m) the discipline to which persons endeavouring to escape from any industrial, agricultural or reformatory settlement or school, or otherwise offending against the rules for the time being in force, shall be subject, the periodical visitation of such settlement or school and the removal from it of such persons as it shall seem expedient to remove.

Penalties and Procedure.

Penalties for failure to comply with terms of notice under section 5 or 7.

21. Whoever, being a member of a criminal tribe, without lawful excuse, the burden of proving which shall lie upon him,—

- (a) fails to appear in compliance with a notice issued under section 5 or section 7, or
- (b) intentionally omits to furnish any information required under those sections, or
- (c) when required to furnish information under either of those sections, furnishes as true any information which he knows, or has reason to believe to be, false, or

Case-law :—(a) Under the Act of 1871, District Magistrate only could order roll-call of names of registered persons, or, when specially authorised by him, the District Superintendent of Police ; but latter cannot delegate his powers to his Sub Inspectors by giving them general authority to order roll-calls, 28 P.R. 1908, Cr.—9 Cr. L.J. 94.

(d) refuses to allow his finger-impressions to be taken, may be arrested without warrant, and shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees or with both.

22. (a) (1) Whoever, being a registered member of a criminal tribe, violates a rule made under clause (e), clause (f) or clause (g) of section 20 shall be punishable with imprisonment for a term which may extend,—

- (a) on a first conviction, to one year,
- (b) on a second conviction, to two years, and
- (c) on any subsequent conviction, to three years.

(2) Whoever, being a registered member of a criminal tribe, violates a rule made under any other clause of section 20 shall be punishable,—

- (a) on a first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both ; and
- (b) on any subsequent conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

23. (1) Whoever, being a member of any criminal tribe (c), and, having been convicted of any of the offences under the Indian Penal Code specified in the Schedule, XLV of 1860, is hereafter convicted of the same or any other offence specified in the said schedule, shall, in the absence of special reasons to the contrary to be mentioned in the judgment of the Court, be punished,—

- (a) on a second conviction (d), with imprisonment for a term of not less than seven years, and
- (b) on a third conviction, with transportation for life.

(2) Nothing in this section shall affect the liability of such person to any further or other punishment to which he may be liable under the Indian Penal Code or any other law.

XLV of 1860.

Punishment for registered members of criminal tribe found under suspicious circumstances.

24. (e) Whoever, being a registered member of any criminal tribe, is found in any place under such circumstances as to satisfy the Court—

- (a) that he was about to commit, or aid in the commission of, theft or robbery, or
- (b) that he was waiting for an opportunity to commit theft or robbery,

shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine which may extend to one thousand rupees.

Case-law :—(a) Conviction under S. 22 may be recorded without framing a charge and on the strength of accused's statement, 17 Cr. L.J. 70=32 Ind. Cas. 662. (b) Evidence of conviction before the passing of the Act, admissible, 14 A.L.J. 687=36 Ind. Cas. 143=17 Cr. L.J. 468. (c) Notification of the tribe as a criminal tribe at the time of previous conviction not necessary, 35 Ind. Cas. 824=17 Cr. L.J. 392. (d) Need not be second conviction after notification, 32 M.L.J. 212=40 M. 923=38 Ind. Cas. 629 ; see 35 Ind. Cas. 824. (e) See 32 Ind. Cas. 662.

Arrest of registered person found beyond prescribed limits.

25. (1) Whoever, being a registered member of a criminal tribe,—

- (a) is found in any part of British India, beyond the area, if any, prescribed for his residence, without the prescribed pass, or in a place or at a time not permitted by the conditions of his pass ; or
- (b) escapes from an industrial, agricultural or reformatory settlement or school,

may be arrested without warrant by any police officer, village headman, or village watchman, and taken before a Magistrate, who, on proof of the facts, shall order him to be removed to the district in which he ought to have resided or to the settlement or school from which he has escaped (as the case may be), there to be dealt with in accordance with this Act or any rules made thereunder.

(2) The rules for the time being in force for the removal of prisoners shall apply to all persons removed under this section or under any other provision of this Act :

Provided that an order from the Local Government or from the Inspector-General of Prisons shall not be necessary for the removal of such persons.

26. (1) Every village headman and village watchman in a village in which any persons belonging to a criminal tribe reside, and every owner or occupier of land on which any such persons reside or the agent of any such owner or occupier, shall forthwith communicate to the officer in charge of the nearest police station any information which he may obtain of—

Duties of village headmen, village watchmen and owners or occupiers of land to give information in certain cases.

- (a) the failure of any such person to appear and give information as directed in section 5 ; or
- (b) the departure of any registered member of a criminal tribe from such village or from such land (as the case may be).

(2) Every village headman and village watchman in a village and every owner or occupier of land or the agent of such owner or occupier, shall forthwith communicate (a) to the officer in charge of the nearest police station any information which he may obtain of the arrival at such village or on such land (as the case may be) of any persons who may reasonably be suspected of belonging to any criminal tribes.

27. Any village headman, village watchman, owner or occupier of land or the agent of such owner or occupier, who fails to comply with the requirements of section 26, shall be deemed to have committed an offence punishable

Penalty for breach of such duties.

XLV of 1860. under the first part of section 176 of the Indian Penal Code.

Case-law :—(a) Reasonable time must be given for giving information, 18 Cr. L.J. 615=39 Ind. Cas. 984.

Supplemental.

28. No Court of justice shall question the validity of any notification published under the provisions of section 3, section 12 or section 13 on the ground that the provision hereinbefore contained or any of them have not been complied with, or entertain in any form whatever the question whether they have been complied with ; but every such notification shall be conclusive proof that it has been issued in accordance with law.

[1] 29. * * * *

THE SCHEDULE.

(See section 23.)

CHAPTER XII.

SECTIONS.

- 231. Counterfeiting coin.
- 232. Counterfeiting Queen's coin.
- 233. Making or selling instrument for counterfeiting coin.
- 234. Making or selling instrument for counterfeiting Queen's coin.
- 235. Possession of instrument or material for the purpose of using the same for counterfeiting coin.
- 239. Delivery of coin possessed with the knowledge that it is counterfeit.
- 240. Delivery of Queen's coin possessed with the knowledge that it is counterfeit.
- 242. Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.
- 243. Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.

CHAPTER XVI.

- 299. Culpable homicide.
- 307. Attempt to murder.
- 308. Attempt to commit culpable homicide.
- 310. Being a thug.
- 322. Voluntarily causing grievous hurt.
- 324. Voluntarily causing hurt by dangerous weapons or means.
- 326. Voluntarily causing grievous hurt by dangerous weapons or means.
- 327. Voluntarily causing hurt to extort property or to constrain to an illegal act.
- 328. Causing hurt by means of poison, etc., with intent to commit an offence.
- 329. Voluntarily causing grievous hurt to extort property or to constrain to an illegal act.
- 332. Voluntarily causing hurt to deter public servant from his duty.

Leg. Changes :—[1] Repealed by Act X of 1914.

Defence of India ACT IV OF 1915 (DEFENCE OF INDIA).

SECTIONS.

333. Voluntarily causing grievous hurt to deter public servant from his duty.
 369. Kidnapping child under ten years with intent to steal from its person.

CHAPTER XVII.

382. Theft after preparation made for causing death, hurt or restraint, in order to the committing of the theft.
 383. Extortion.
 385. Putting person in fear of injury in order to commit extortion.
 386. Extortion by putting a person in fear of death or grievous hurt.
 387. Putting person in fear of death or grievous hurt in order to commit extortion.
 390. Robbery.
 391. Dacoity.
 393. Attempt to commit robbery.
 394. Voluntarily causing hurt in committing robbery.
 397. Robbery or dacoity, with attempt to cause death or grievous hurt.
 398. Attempt to commit robbery or dacoity when armed with deadly weapon.
 399. Making preparation to commit dacoity.
 402. Assembling for purpose of committing dacoity.
 457. Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.
 458. Lurking house-trespass or house-breaking by night after preparation for hurt, assault or wrongful restraint.
 459. Grievous hurt caused whilst committing lurking house-trespass or house-breaking.
 460. All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.

THE DEFENCE OF INDIA (CRIMINAL LAW AMENDMENT) ACT, 1915.

(ACT IV OF 1915.)

[Passed on the 19th March, 1915.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1915	IV	Defence of India (Criminal Law Amendment).	Am. by Act II of 1916.

An Act to provide for special measures to secure the public safety and the defence of British India and for the more speedy trial of certain offences.

WHEREAS owing to the existing state of war it is expedient to provide for special measures to secure the public safety and the defence of British

S. 2 ACT IV OF 1915 (DEFENCE OF INDIA). Defence of India

India and for the more speedy trial of certain offences ; It is hereby enacted as follows :—

Short title, extent and duration. 1. (1) This Act may be called the Defence of India (Criminal Law Amendment) Act, 1915.

(2) It extends to the whole of British India including British Baluchistan, the Sonthal Parganas and the district of Angul.

(3) This section and section 2 shall come into operation at once. The Governor General in Council may, by notification in the Gazette of India, direct that the rest of the Act shall come into operation in any province or part thereof on such date as may be specified in such notification.

(4) This Act shall be in force during the continuance of the present war and for a period of six months thereafter :

Provided that the expiration of this Act shall not affect the validity of anything done in pursuance of it and any person convicted under this Act may be punished as if it had continued in force, and all prosecutions and other legal proceedings pending under this Act at the time of the expiration thereof may be completed and carried into effect, and the sentences carried into execution as if this Act had not expired.

2. (1) The Governor General in Council may make rules for the purpose of securing the public safety and the defence of British India and as to the powers and duties of public servants and other persons in furtherance of that purpose.

Power to make rules.

In particular and without prejudice to the generality of the foregoing power, rules under this section may be made—

- (a) to prevent persons communicating with the enemy or obtaining information which may be used for that purpose ;
- (b) to secure the safety of His Majesty's forces and ships and to prevent the prosecution of any purpose likely to jeopardise the success of the operations of His Majesty's forces or the forces of His Allies or to assist the enemy ;
- (c) to prevent the spread of false reports or reports likely to cause disaffection or alarm or to prejudice His Majesty's relations with Foreign Powers or to promote feelings of enmity and hatred between different classes of His Majesty's subjects ;
- (d) to empower any civil or military authority to issue such orders and take such measures as may be necessary to secure the safety of railways, ports, dockyards, telegraphs, post offices, works for the supply of gas, electric light or water, sources of water-supply, all means of communication and any areas which may be notified by such civil or military authority, as areas which it is necessary to safeguard in the public interest ;
- (e) to enable any naval or military authority to take possession of any property, moveable or immoveable, for naval or military purposes, and to issue such orders and do such acts in respect of any property as may be necessary to secure the public safety or the defence of British India or any part thereof ;

- (f) to empower any civil or military authority where, in the opinion of such authority, there are reasonable grounds for suspecting that any person has acted, is acting or is about to act in a manner prejudicial to the public safety, to direct that such person shall not enter, reside or remain in any area specified in writing by such authority, or that such person shall reside and remain in any area so specified, or that he shall conduct himself in such manner or abstain from such acts, or take such order with any property in his possession or under his control, as such authority may direct ;
 - (g) to prohibit or regulate the possession of explosives, inflammable substances, arms and all other munitions of war ;
 - (h) to prohibit anything likely to prejudice the training or discipline of His Majesty's forces and to prevent any attempt to tamper with the loyalty of persons in the service of His Majesty or to dissuade persons from entering the military or police service of His Majesty ;
 - (i) to empower any civil or military authority to enter and search any place if such authority has reason to believe that such place is being used for any purpose prejudicial to the public safety or to the defence of British India and to seize anything found there which he has reason to believe is being used for any such purpose ;
 - (j) to provide for the arrest of persons contravening or reasonably suspected of contravening any rule made under this section and prescribing the duties of public servants and other persons in regard to such arrests ;
 - (k) to prescribe the duties of public servants and other persons as to preventing any contravention of rules made under this section and to prohibit any attempt to screen persons contravening any such rule from punishment ; and
 - (l) otherwise to prevent assistance being given to the enemy or the successful prosecution of the war being endangered ;
- [1] (m) to require that there shall be placed, at the disposal of the Governor General in Council, the whole or any part of the output of any factory, workshop, mine or other industrial concern for the manufacture, preparation or extraction of any article or thing which, in his opinion, can be utilised in the prosecution of the present war ;
- (n) to take possession of, and use for the purpose of the Governor General in Council, any such factory, workshop, mine or industrial concern or any appurtenances or plant thereof ;
 - (o) to require any work in any such factory, workshop, mine or industrial concern to be done in accordance with the directions of the Governor General in Council ;
 - (p) to regulate or restrict the carrying out of work in any such factory, workshop, mine or industrial concern, or to remove the plant therefrom with the object of increasing the output

Leg. Changes :—[1] Clauses (m) to (r) were added by Act II of 1916.

of any other such factory, workshop, mine or industrial concern ;

- (q) to provide for any other action which may be necessary to regulate the possession, or to facilitate the collection, manufacture, preparation or extraction of any article or thing, which can, in the opinion of the Governor General in Council, be utilised in the prosecution of the present war ; and
- (r) to regulate the sailings of British steamers from any port in British India, and to reserve, for the use of the Governor General in Council, all or any accommodation of whatever kind for the carriage of persons, animals or goods on any such steamers.

(2) Rules made under this section may provide that any contravention thereof or of any order issued under the authority of any such rule shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both, or if the intention of the person so contravening any such rule or order is to assist the King's enemies or to wage war against the King, may provide that such contravention shall be punishable with death, transportation for life or imprisonment for a term which may extend to ten years, to any of which punishments fine may be added.

(3) All rules made under this section shall be published in the Gazette of India and shall thereupon have effect as if enacted in this Act.

3. (1) The Local Government may by order in writing direct that any person accused of anything which is an offence in virtue of any rule made under section 2, or accused of any offence punishable with death, transportation or imprisonment for a term which may extend to seven years, or of criminal conspiracy to commit, or of abetting, or of attempting to commit or abet any such offence shall be tried by Commissioners appointed under this Act.

Power of Local Government to direct accused person to be tried by Commissioners.

(2) (a) Orders under sub-section (1) may be made in respect of all persons accused of any offence referred to in that sub-section, or in respect of any class of person so accused, or in respect of persons or classes of persons accused of any particular offence therein referred to or accused of any class of such offences.

(3) No order under sub-section (1) shall be made in respect of or be deemed to include any person who has been committed under the Code of Criminal Procedure, 1898, for trial before a High Court, or in whose case an order for trial has been made under section 6 of the Indian Criminal Law Amendment Act, 1908, but, save as aforesaid, an order under that sub-section may be made in respect of or may include any person accused of any offence referred to therein whether such offence was committed before or after the commencement of this Act.

Appointment and qualification of Commissioners.

4. (1) Commissioners for the trial of persons under this Act shall be appointed by the Local Government.

Case-law:—(a) Local Government's, directing certain offences specified in S. 3 (1) to be tried by special tribunal, ousts the jurisdiction of the regular Courts, so long as order the order remains in force, 38 P.R. 1917, Cr. = 42 P.W.R. 1917, Cr.

(2) Such Commissioners may be appointed for the whole province or any part thereof or for the trial of any particular accused person or class of accused persons.

24 & 25 Vict,
c. 104. (3) All trials under this Act shall be held by three Commissioners, of whom at least two shall be persons who have served as Sessions Judges or Additional Sessions Judges for a period of not less than three years, or are persons qualified under section 2 of the Indian High Courts Act, 1861, for appointment as Judges of a High Court or are advocates of a Chief Court or pleaders of ten years' standing.

V of 1898. 5. (1) Commissioners appointed under this Act may take cognizance of offences without the accused being committed to them for trial, and, in trying accused persons, shall, subject to any rules made by the Local Government in this behalf, follow the procedure prescribed by the Code of Criminal Procedure, 1898, for the trial of warrant cases by magistrates :

Provided that such Commissioners shall make a memorandum only of the substance of the evidence of each witness examined, and shall not be bound to adjourn any trial for any purpose unless such adjournment is in their opinion necessary in the interests of justice.

(2) In the event of any difference of opinion between the Commissioners, the opinion of the majority shall prevail.

6. (1) The judgment of Commissioners appointed under the Act shall be final and conclusive and such Commissioners may pass upon any person convicted by them any sentence authorised by law for the punishment of the offence of which such person is convicted and no order of confirmation shall be necessary in the case of any sentence passed by them.

(2) If in any trial under this Act it is proved that the accused person has committed any offence whether referred to in section 3 or in any order under that section or not, the Commissioners may convict such accused person of such offence and pass any sentence authorised by law for the punishment thereof.

V of 1898. 7. The provisions of the Code of Criminal Procedure, 1893, so far as they are inconsistent with the special procedure prescribed by or under this Act, shall not apply to the proceedings of Commissioners appointed under this Act, but save as otherwise provided, that Code shall apply to such proceedings and the Commissioners shall have all the powers conferred by the Code on a Court of Session exercising original jurisdiction.

V of 1898. 8. (1) Notwithstanding the provisions of the Code of Criminal Procedure, 1898, or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence of Commissioners appointed under this Act, and no Court shall have authority to revise any such order or sentence, or to transfer any case from such Commissioners, or to make any order under section 491 of the Code of Criminal Procedure, 1898, or have any jurisdiction of any kind in respect of any proceedings under this Act.

(2) Nothing in sub-section (1) shall be deemed to affect the power of the Governor General in Council or the Local Government to make orders under section 401 or 402 of the Code of Criminal Procedure, 1898, in V of 1898. respect of persons sentenced by Commissioners under this Act.

9. Notwithstanding anything contained in the Indian Evidence Act, 1872, where the statement of any person has been recorded by a Magistrate, such statement may be admitted in evidence in any trial before Commissioners appointed under this Act if such person is dead or cannot be found or is incapable of giving evidence, and the Commissioners are of opinion that such death, disappearance or incapacity has been caused in the interest of the accused.

Rule-making powers of Local Government. 10. The Local Government may, by notification in the local official Gazette, make rules providing for—

(i) the times and places at which Commissioners appointed under this Act may sit;

(ii) the procedure of such Commissioners including the appointment and powers of their President, and the procedure to be adopted in the event of any Commissioner being prevented from attending throughout the trial of any accused person;

(iii) the manner in which prosecutions before such Commissioners shall be conducted, and the appointment and powers of persons conducting such prosecutions;

(iv) the execution of sentences passed by such Commissioners;

(v) the temporary custody or release on bail of persons referred to or included in any order made under sub-section (1) of section 3, and for the transmission of records to the Commissioners; and

(vi) any matter which appears to the Local Government to be necessary for carrying into effect the provisions of the Act relating or ancillary to trials before Commissioners.

11. No order under this Act shall be called in question in any court, and no suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

THE DESTRUCTIVE INSECTS AND PESTS ACT, 1914.

(ACT II OF 1914).

[Passed on the 3rd February, 1914.]

An Act to prevent the introduction into British India of any insect, fungus or other pest, which is or may be destructive to crops.

WHEREAS it is expedient to make provision for preventing the introduction into British India of any insect, fungus or other pest, which is or may be destructive to crops; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Destructive Insects and Pests Act, 1914.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "crops" includes all agricultural or horticultural crops, and trees or bushes ;

(b) "import" means the bringing or taking by sea or land ; and

(c) "infection" means infection by any insect, fungus or other pest injurious to a crop.

Power of Governor General in Council to regulate or prohibit the import of articles likely to infect.

3. (1) The Governor General in Council may, by notification in the Gazette of India, prohibit or regulate, subject to such restrictions and conditions as he may impose, the import into British India, or any part thereof, or any specified place therein, of any article or class of articles likely to cause infection to any crop.

(2) A notification under this section may specify any article or class of articles, either generally or in any particular manner, whether with reference to the country of origin, or the route by which imported or otherwise.

VIII of 1878.

4. A notification under section 3 shall operate as if it had been issued under section 19 of the Sea Customs Act, 1878, and the officers of Customs at every port shall have the same powers in respect of any article with regard to the importation of which such a notification has been issued as they have for the time being in respect of any article the importation of which is regulated, restricted or prohibited by the law relating to Sea Customs, and the law for the time being in force relating to Sea Customs or any such article shall apply accordingly.

5. (1) The Local Government may, subject to the control of the Governor General in Council, make rules for the detention, inspection, disinfection or destruction of any article or class of articles in respect of which a notification has been issued under section 3 or of any article which may have been in contact or proximity thereto, and for regulating the powers and duties of the officers whom it may appoint in this behalf.

(2) In making any rule under this section the Local Government may direct that a breach thereof shall be punishable with fine, which may extend to one thousand rupees.

Protection to persons acting under Act.

6. No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

THE DRAMATIC PERFORMANCE ACT, 1876.

(ACT XIX OF 1876.)

[Passed on the 16th December, 1876.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1876	XIX	Dramatic Performance	Rep. in pt., Act IV of 1914. Am., Act X of 1914.

An Act for the better control of public dramatic performances.

Preamble. WHEREAS it is expedient to empower the Government to prohibit public dramatic performances which are scandalous, defamatory, seditious or obscene ; It is hereby enacted as follows :—

Short title. 1. This Act may be called "The Dramatic Performances Act, 1876 " :

Local extent. It extends to the whole of British India ;

Commencement. [1]* * * *

"Magistrate" defined. 2. In this Act "Magistrate" means, in the Presidency Towns, a Magistrate of Police, and elsewhere the Magistrate of the District.

Power to prohibit certain dramatic performances. 3. Whenever the Local Government is of opinion that any play, pantomime, or other drama performed or about to be performed in a public place is—

(a) of a scandalous or defamatory nature, or

(b) likely to excite feelings of disaffection to the Government established by law in British India, or

(c) likely to deprave and corrupt persons present at the performance,

the Local Government, or outside the Presidency Towns and Rangoon the Local Government or such Magistrate as it may empower in this behalf, may by order prohibit the performance.

Explanation.—Any building or enclosure to which the public are admitted to witness a performance on payment of money shall be deemed a "public place" within the meaning of this section.

4. A copy of any such order may be served on any person about to take part in the performance so prohibited, or on the

Power to serve order of prohibition. owner or occupier of any house, room or place in which such performance is intended to take place ;

Penalty for disobeying order. and any person on whom such copy is served, and who does, or willingly permits, any act in disobedience to such order, shall be punished on conviction before

a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.

Leg. Changes :—[1] Omitted by Act X of 1914.

Dramatic Perform. ACT XIX OF 1876 (DRAMATIC PERFORM.). S. 8

5. Any such order may be notified by proclamation, and a written or printed notice thereof may be stuck up at any place or places adapted for giving information of the order to the persons intending to take part in or to witness the performance so prohibited.

6. Whoever, after the notification of any such order—
 Penalty for disobeying prohibition.

(a) takes part in the performance prohibited thereby, or in any performance substantially the same as the performance so prohibited, or

(b) in any manner assists in conducting any such performance, or

(c) is in wilful disobedience to such order present as a spectator during the whole or any part of any such performance, or

(d) being the owner or occupier, or having the use of any house, room or place, opens, keeps or uses the same for any such performance, or permits the same to be opened, kept or used for any such performance,

shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.

7. For the purpose of ascertaining the character of any intended public dramatic performance, the Local Government or such officer as it may specially empower in this behalf, may apply to the author, proprietor or printer of the drama about to be performed, or to the owner or occupier of the place in which it is intended to be performed, for such information as the Local Government or such officer thinks necessary.

Every person so applied to shall be bound to furnish the same to the best of his ability, and whoever contravenes this section shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

8. If any Magistrate has reason to believe that any house, room or place is used, or is about to be used, for any performance prohibited under this Act, he may, by his warrant, authorize any officer of police to enter with such assistance as may be requisite, by night or by day, and by force if necessary, any such house, room or place, and to take into custody all persons whom he finds therein, and to seize all scenery, dresses and other articles found therein and reasonably suspected to have been used, or to be intended to be used, for the purpose of such performance.

Saving of prosecutions under Penal Code, sections 124A

XLV of 1860. and 294.

9. No conviction under this Act shall bar a prosecution under section 124A or section 294 of the Indian Penal Code.

10. Whenever it appears to the Local Government that the provisions of this section are required in any local area, it may [1] * * * * * declare, by notification in the local official Gazette, that such provisions are applied to such area from a day to be fixed in the notification.

Power to prohibit dramatic performances in any local area, except under license.

Leg. Changes :—[1] Omitted by Act IV of 1914.

On and after that day, the Local Government may order that no dramatic performance shall take place in any place of public entertainment within such area, except under a license to be granted by such Local Government, or such officer as it may specially empower in this behalf.

The Local Government may also order that no dramatic performance shall take place in any place of public entertainment within such area, unless a copy of the piece, if and so far as it is written, or some sufficient account of its purport, if and so far as it is in pantomime, has been furnished, not less than three days before the performance, to the Local Government, or to such officer as it may appoint in this behalf.

A copy of any order under this section may be served on any keeper of a place of public entertainment, and if thereafter he does, or willingly permits, any act in disobedience to such order, he shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.

Powers exercise-
able by Governor
General.

11. The powers conferred by this Act on the Local Government may be exercised also by the Governor General in Council.

Exclusion of per-
formances at reli-
gious festivals.

12. Nothing in this Act applies to any *jatras* or performances of a like kind at religious festivals.

THE INDIAN ELECTRICITY ACT, 1910.

(ACT IX OF 1910.)

[Passed on the 18th March, 1910.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected,
1887	XIII	Electricity Act	Rep., Act III of 1903.
1895	IX	Calcutta Electric Lighting Act	Do.
1902	I (Ben.)	Howrah Bridge Electric Lighting Act.	Do.
1903	III	Electricity Act	Rep., Act IX of 1910.
1910	IX	Electricity	Am., Act X of 1914.

An Act to amend the law relating to the supply and use of electrical energy.

WHEREAS it is expedient to amend the law relating to the supply and use of electrical energy ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title, extent
and commencement.

1. (1) This Act may be called the Indian Electricity Act, 1910.

(2) It extends to the whole of British India, inclusive of British Baluchistan and the Santhal Parganas ; and

(3) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, direct in this behalf.

XIII of 1885.

2. In this Act, expressions defined in the Indian Telegraph Act, 1885, have the meanings assigned to them in that Act, and, unless there is anything repugnant in the subject or context,—

Definitions.

(a) "aerial line" means any electric supply-line which is placed above ground and in the open air :

(b) "area of supply" means the area within which alone a licensee is for the time being authorized by his license to supply energy :

(c) "consumer" means any person who is supplied with energy by a licensee, or whose premises are for the time being connected for the purposes of a supply of energy with the works of a licensee :

(d) "daily fine" means a fine for each day on which an offence is continued after conviction therefor :

(e) "distributing main" means the portion of any main with which a service line is, or is intended to be, immediately connected :

(f) "electric supply-line" means a wire, conductor or other means used for conveying, transmitting or distributing energy together with any casing, coating, covering, tube, pipe or insulator enclosing, surrounding or supporting the same or any part thereof, or any apparatus connected therewith for the purpose of so conveying, transmitting or distributing such energy :

(g) "energy" means electrical energy when generated, transmitted, supplied or used for any purpose except the transmission of a message :

(h) "licensee" means any person licensed under Part II to supply energy :

(i) "main" means any electric supply-line through which energy is, or is intended to be, supplied by a licensee to the public :

(j) "prescribed" means prescribed by rules made under this Act :

(k) "public lamp" means an electric lamp used for the lighting of any street :

(l) "service line" means any electric supply-line through which energy is, or is intended to be, supplied by a licensee to a consumer either from a distributing main or immediately from the licensee's premises :

(m) "street" includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, over which the public have a right of way, and also the roadway and footway over any public bridge or causeway : and

(n) "works" includes electric supply-lines and any buildings, machinery or apparatus required to supply energy and to carry into effect the objects of a license granted under Part II.

PART II.

SUPPLY OF ENERGY.

Licenses.

3. (1) The Local Government may, on application made in the prescribed form and on payment of the prescribed fee (if any), grant to any person a license to supply energy in any specified area, and also to lay down or place electric supply-lines for the conveyance and transmission of energy,—

(a) where the energy to be supplied is to be generated outside such area, from a generating station situated outside such area to the boundary of such area, or

(b) where energy is to be conveyed or transmitted from any place in such area to any other place therein, across an intervening area not included therein, across such area.

(2) In respect of every such license and the grant thereof the following provisions shall have effect, namely:—

(a) any person applying for a license under this Part shall publish a notice of his application in the prescribed manner and with the prescribed particulars, and the license shall not be granted—

(i) until all objections received by the Local Government with reference thereto have been considered by it :

Provided that no objection shall be so considered unless it is received before the expiration of three months from the date of the first publication of such notice as aforesaid ; and

(ii) until, in the case of an application for a license for an area including the whole or any part of any cantonment, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for naval or military purposes, the Local Government has ascertained that there is no objection to the grant of the license on the part of the General Officer Commanding the Division ;

(b) where an objection is received from any local authority concerned, the Local Government shall, if in its opinion the objection is insufficient, record in writing and communicate to such local authority its reasons for such opinion ;

(c) no application for a license under this Part shall be made by any local authority except in pursuance of a resolution passed at a meeting of such authority held after one month's previous notice of the same and of the purpose thereof has been given in the manner in which notices of meetings of such local authority are usually given ;

(d) a license under this Part—

(i) may prescribe such terms as to the limits within which, and the conditions under which, the supply of energy is to be compulsory or permissive, and as to the limits of price

to be charged in respect of the supply of energy, and generally as to such matters as the Local Government may think fit; and

- (ii) save in cases in which under section 10, clause (b), the provisions of sections 5 and 7, or either of them, have been declared not to apply, every such license shall declare whether any generating station to be used in connection with the undertaking shall or shall not form part of the undertaking for the purpose of purchase under section 5 or section 7;
- (e) the grant of a license under this Part for any purpose shall not in any way hinder or restrict the grant of a license to another person within the same area of supply for a like purpose;
- (f) the provisions contained in the Schedule shall be deemed to be incorporated with, and to form part of, every license granted under this Part, save in so far as they are expressly added to, varied or excepted by the license, and shall, subject to any such additions, variations or exceptions which the Local Government is hereby empowered to make, apply to the undertaking authorized by the license:

Provided that, where a license is granted in accordance with the provisions of clause IX of the Schedule for the supply of energy to other licensees for distribution by them, then, in so far as such license relates to such supply, the provisions of clauses IV, V, VI, VII, VIII and XII of the Schedule shall not be deemed to be incorporated with the license.

(3) The exercise of the powers conferred on the Local Government by this section shall be subject to the control of the Governor General in Council.

Revocation or amendment of licenses. 4. (1) The Local Government may, if in its opinion the public interest so requires, revoke a license in any of the following cases, namely:—

- (a) where the licensee, in the opinion of the Local Government, makes wilful and unreasonably prolonged default in doing anything required of him by or under this Act;
- (b) where the licensee breaks any of the terms or conditions of his license the breach of which is expressly declared by such license to render it liable to revocation;
- (c) where the licensee fails, within the period fixed in this behalf by his license or any longer period which the Local Government may substitute therefor by order under sub-section (3), clause (b), and before exercising any of the powers conferred on him thereby in relation to the execution of works,—
 - (i) to show, to the satisfaction of the Local Government, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his license, or

- (ii) to make the deposit or furnish the security required by his license;
- (d) where the licensee is, in the opinion of the Local Government, unable, by reason of his insolvency, fully and efficiently to discharge the duties and obligations imposed on him by his license.

(2) Where the Local Government might, under sub-section (1), revoke a license, it may, instead of revoking the license, permit it to remain in force subject to such further terms and conditions as it thinks fit to impose, and any further terms or conditions so imposed shall be binding upon, and be observed by, the licensee, and shall be of like force and effect as if they were contained in the license.

(3) Where in its opinion the public interest so permits, the Local Government may, on the application or with the consent of the licensee, and, if the licensee is not a local authority, after consulting the local authority (if any) concerned,—

- (a) revoke a license as to the whole or any part of the area of supply upon such terms and conditions as it thinks fit, or
- (b) make such alterations or amendments in the terms and conditions of a license, including the provisions specified in section 3, sub-section (2), clause (f), as it thinks fit.

Provisions where license of licensee, not being a local authority, is revoked.

5. Where the Local Government revokes, under section 4, sub-section (1), the license of a licensee, not being a local authority, the following provisions shall have effect, namely :—

(a) the Local Government shall serve a notice of the revocation upon the licensee, and, where the whole of the area of supply is included in the area for which a single local authority is constituted, upon that local authority also, and shall in the notice fix a date on which the revocation shall take effect; and on and with effect from that date all the powers and liabilities of the licensee under this Act shall absolutely cease and determine;

(b) where a notice has been served on a local authority under clause (a), the local authority may, within three months after the service of the notice, and with the written consent of the Local Government, by notice in writing, require the licensee to sell, and thereupon the licensee shall sell, the undertaking to the local authority on payment of the value of all lands, buildings, works, materials and plant of the licensee suitable to, and used by him for, the purposes of the undertaking, other than a generating station declared by the license not to form part of the undertaking for the purpose of purchase, such value to be, in case of difference or dispute, determined by arbitration:

Provided that the value of such lands, buildings, works, materials and plant shall be deemed to be their fair market-value at the time of purchase, due regard being had to the nature and condition for the time being of such lands, buildings, works, materials and plant, and to the state of repair thereof, and to the circumstance that they are in such a

position as to be ready for immediate working, and to the suitability of the same for the purposes of the undertaking, but without any addition in respect of compulsory purchase or of goodwill or of any profits which may be or might have been made from the undertaking, or of any similar considerations ;

(c) where no purchase has been effected by the local authority under clause (b), and any other person is willing to purchase the undertaking, the Local Government may, if it thinks fit, with the consent of the licensee, or without the consent of the licensee in case the price is not less than that for which the local authority might have purchased the same, require the licensee to sell, and thereupon the licensee shall sell, the undertaking to such other person ;

(d) where no purchase has been effected under clause (b) or clause (c) within such time as the Local Government may consider reasonable, or where the whole of the area of supply is not included in the area for which a single local authority is constituted, the Local Government shall have the option of purchasing the undertaking and, if the Local Government elects to purchase, the licensee shall sell the undertaking to the Local Government upon terms and conditions similar to those set forth in clause (b) ;

(e) where a purchase has been effected under any of the preceding clauses,—

(i) the undertaking shall vest in the purchasers free from any debts, mortgages or similar obligations of the licensee or attaching to the undertaking :

Provided that any such debts, mortgages or similar obligations shall attach to the purchase-money in substitution for the undertaking ; and

(ii) the revocation of the license shall extend only to the revocation of the rights, powers, authorities, duties and obligations of the licensee from whom the undertaking is purchased, and, save as aforesaid, the license shall remain in full force, and the purchaser shall be deemed to be the licensee :

Provided that where the Local Government elects to purchase under clause (d), the license shall, after purchase, in so far as the Local Government is concerned, cease to have any further operation ;

(f) where no purchase has been effected under any of the foregoing clauses, the licensee shall have the option of disposing of all lands, buildings, works, materials and plant belonging to the undertaking in such manner as he may think fit :

Provided that, if the licensee does not exercise such option within a period of six months from the date on which the same became exerciseable, the Local Government may forthwith cause the works of the licensee in, under, over, along or across any street to be removed and every such street to be reinstated, and recover the cost of such removal and reinstatement from the licensee ;

(g) if the licensee has been required to sell the undertaking, and if the sale has not been completed by the date fixed in the notice issued under clause (a), the purchaser may, with the previous sanction of the Local Government, work the undertaking pending the completion of the sale.

6. (1) Where the Local Government revokes the license of a local authority under section 4, sub-section (1), and any person is willing to purchase the undertaking, the Local Government may, if it thinks fit, require the local authority to sell, and thereupon the local authority shall sell, the undertaking to such person on such terms as the Local Government thinks just.

(2) Where no purchase has been effected under sub-section (1), the licensee shall have the option of disposing of all lands, buildings, works, materials and plant belonging to the undertaking in such manner as he may think fit :

Provided that, if the licensee does not exercise such option within a period of six months from the date on which the same became exercisable, the Local Government may forthwith cause the works of the licensee in, under, over, along or across any street to be removed and every such street to be reinstated, and recover the cost of such removal and reinstatement from the licensee.

7. (1) Where a license has been granted to any person not being a local authority, and the whole of the area of supply is included in the area for which a single local authority is constituted, the local authority shall, on the expiration of such period, not exceeding fifty years, and of every such subsequent period, not exceeding twenty years, as shall be specified in this behalf in the license, have the option of purchasing the undertaking, and, if the local authority, with the previous sanction of the Local Government, elects to purchase, the licensee shall sell the undertaking to the local authority on payment of the value of all lands, buildings, works, materials and plant of the licensee suitable to, and used by him for, the purposes of the undertaking, other than a generating station declared by the license not to form part of the undertaking for the purpose of purchase, such value to be, in case of difference or dispute, determined by arbitration :

Provided that the value of such lands, buildings, works, materials and plant shall be deemed to be their fair market-value at the time of purchase, due regard being had to the nature and condition for the time being of such lands, buildings, works, materials and plant, and to the state of repair thereof, and to the circumstance that they are in such a position as to be ready for immediate working, and to the suitability of the same for the purposes of the undertaking :

Provided also that there shall be added to such value as aforesaid such percentage, if any, not exceeding twenty per centum on that value as may be specified in the license, on account of compulsory purchase.

(2) Where—

(a) the local authority does not elect to purchase under sub-section (1), or

- (b) the whole of the area of supply is not included in the area for which a single local authority is constituted, or
- (c) a licensee supplies energy from the same generating station to two or more areas of supply, each controlled by its own local authority, and has been granted a license in respect of each area of supply,

the Local Government shall have the like option upon the like terms and conditions.

(3) Where a purchase has been effected under sub-section (1) or sub-section (2),—

- (a) the undertaking shall vest in the purchasers free from any debts, mortgages or similar obligations of the licensee or attaching to the undertaking :

Provided that any such debts, mortgages or similar obligations shall attach to the purchase-money in substitution for the undertaking ; and

- (b) save as aforesaid, the license shall remain in full force, and the purchaser shall be deemed to be the licensee :

Provided that where the Local Government elects to purchase under sub-section (2), the license shall, after purchase, in so far as the Local Government is concerned, cease to have any further operation.

(4) Not less than two years' notice in writing of any election to purchase under this section shall be served upon the licensee by the local authority or the Local Government, as the case may be.

(5) Notwithstanding anything hereinbefore contained, a local authority may, with the previous sanction of the Local Government, waive its option to purchase and enter into an agreement with the licensee for the working by him of the undertaking until the expiration of the next subsequent period referred to in sub-section (1), upon such terms and conditions as may be stated in such agreement.

8. Where, on the expiration of any of the periods referred to in section 7, sub-section (1), neither a local authority nor the Local Government purchases the undertaking and the license is, on the application or with the consent of the licensee, revoked, the licensee shall have the option of disposing of all lands, buildings, works, materials and plant belonging to the undertaking in such manner as he may think fit :

Provided that, if the licensee does not exercise such option within a period of six months, the Local Government may proceed to take action as provided in section 5, clause (f), proviso.

9. (1) The licensee shall not, at any time without the previous consent in writing of the Local Government, acquire, by purchase or otherwise, the license or the undertaking of, or associate himself, so far as the business of supplying energy is concerned, with any person supplying, or intending to supply, energy under any other license, and, before applying for such consent, the

Provisions where no purchase and license revoked with consent of licensee.

Licensee not to purchase, or associate himself with, other licensed undertakings or transfer his undertaking.

licensee shall give not less than one month's notice of the application to every local authority, both in the licensee's area of supply, and also in the area or district in which such other person supplies, or intends to supply, energy :

Provided that nothing in this sub-section shall be construed to require the consent of the Local Government for the supply of energy by one licensee to another in accordance with the provisions of clause IX of the Schedule.

(2) The licensee shall not at any time assign his license or transfer his undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise without the previous consent in writing of the Local Government.

(3) Any agreement relating to any transaction of the nature described in sub-section (1) or sub-section (2), unless made with, or subject to, such consent as aforesaid, shall be void.

General power for Government to vary terms of purchase. 10. Notwithstanding anything in sections 5, 7 and 8, the Local Government may, with the previous sanction of the Governor General in Council, in any license to be granted under this Act,—

- (a) vary the terms and conditions upon which, and the periods on the expiration of which, the licensee shall be bound to sell his undertaking, or
- (b) direct that, subject to such conditions and restrictions (if any) as it may think fit to impose, the provisions of the said sections or any of them shall not apply.

Annual accounts of licensee. 11. (1) Every licensee shall, unless expressly exempted from the liability by his license, or by order in writing of the Local Government, prepare and render to the Local Government or to such authority as the Local Government may appoint in this behalf, on or before the prescribed date in each year, an annual statement of accounts of his undertaking made up to such date, in such form, and containing such particulars, as may be prescribed in this behalf.

(2) The licensee shall keep copies of such annual statement at his office and sell the same to any applicant at a price not exceeding five rupees per copy.

Works.

Provisions as to the opening and breaking up of streets, railways and tramways. 12. (1) Any licensee may, from time to time but subject always to the terms and conditions of his license, within the area of supply, or, when permitted by the terms of his license to lay down or place electric supply-lines without the area of supply, without that area—

- (a) open and break up the soil and pavement of any street, railway or tramway ;
- (b) open and break up any sewer, drain or tunnel in or under any street, railway or tramway ;
- (c) lay down and place electric supply-lines and other works ;
- (d) repair, alter or remove the same ; and
- (e) do all other acts necessary for the due supply of energy.

(2) Nothing contained in sub-section (1) shall be deemed to authorize or empower a licensee, without the consent of the local authority or of the owner and occupier concerned, as the case may be, to lay down or place any electric supply-line or other work in, through or against any building, or on, over or under any land not dedicated to public use whereon, wherever or whereunder any electric supply-line or work has not already been lawfully laid down or placed by such licensee :

Provided that any support of an aerial line or any stay or strut required for the sole purpose of securing in position any support of an aerial line may be fixed on any building or land or, having been so fixed, may be altered, notwithstanding the objection of the owner or occupier of such building or land, if the District Magistrate or, in a Presidency town or Rangoon, the Commissioner of Police by order in writing so directs :

Provided, also, that, if at any time the owner or occupier of any building or land on which any such support, stay or strut has been fixed shows sufficient cause, the District Magistrate or, in a Presidency-town or Rangoon, the Commissioner of Police may by order in writing direct any such support, stay or strut to be removed or altered.

(3) When making an order under sub-section (2) the District Magistrate or the Commissioner of Police, as the case may be, shall fix the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(4) Every order made by a District Magistrate or a Commissioner of Police under sub-section (2) shall be subject to revision by the Local Government.

(5) Nothing contained in sub-section (1) shall be deemed to authorize or empower any licensee to open or break up any street not repairable by the Government or a local authority, or any railway or tramway, except such streets, railways or tramways (if any), or such parts thereof, as he is specially authorised to break up by his license, without the written consent of the person by whom the street is repairable or of the person for the time being entitled to work the railway or tramway, unless with the written consent of the Local Government :

Provided that the Local Government shall not give any such consent as aforesaid, until the licensee has given notice by advertisement or otherwise as the Local Government may direct, and within such period as the Local Government may fix in this behalf, to the person above-referred to, and until all representations or objections received in accordance with the notice have been considered by the Local Government.

13. (1) Where the exercise of any of the powers of a licensee in relation to the execution of any works involves the placing of any works in, under, over, along or across any street, part of a street, railway, tramway, canal or waterway, the following provisions shall have effect, namely :—

Notice of new works.

- (a) not less than one month before commencing the execution of the works (not being a service line immediately attached, or intended to be immediately attached, to a distributing main, or the repair, renewal or amendment of existing works of

which the character or position is not to be altered), the licensee shall serve upon the person responsible for the repair of the street or part of a street (hereinafter in this section referred to as "the repairing authority") or upon the person for the time being entitled to work the railway, tramway, canal or waterway (hereinafter in this section referred to as "the owner"), as the case may be, a notice in writing describing the proposed works, together with a section and plan thereof on a scale sufficiently large to show clearly the details of the proposed works, and not in any case smaller than one inch to eight feet vertically and sixteen inches to the mile horizontally, and intimating the manner in which, and the time at which, it is proposed to interfere with or alter any existing works, and shall, upon being required to do so by the repairing authority or owner, as the case may be, from time to time give such further information in relation thereto as may be desired ;

- (b) if the repairing authority intimates to the licensee that it disapproves of such works, section or plan, or approves thereof subject to amendment, the licensee may, within one week of receiving such intimation, appeal to the Local Government, whose decision, after considering the reasons given by the repairing authority for its action, shall be final ;
- (c) if the repairing authority fails to give notice in writing of its approval or disapproval to the licensee within one month, it shall be deemed to have approved of the works, section and plan, and the licensee, after giving not less than forty-eight hours' notice in writing to the repairing authority, may proceed to carry out the works in accordance with the notice and the section and plan served under clause (a) ;
- (d) if the owner disapproves of such works, section or plan, or approves thereof subject to amendment, he may, within three weeks after the service of the notice under clause (a) serve a requisition upon the licensee demanding that any question in relation to the works or to compensation, or to the obligations of the owner to others in respect thereof, shall be determined by arbitration, and thereupon the matter shall, unless settled by agreement, be determined by arbitration ;
- (e) where no requisition has been served by the owner upon the licensee under clause (d), within the time named, the owner shall be deemed to have approved of the works, section and plan, and in that case, or where after a requisition for arbitration the matter has been determined by arbitration, the works may, upon payment or securing of compensation, be executed according to the notice and the section and plan, subject to such modifications as may have been determined by arbitration or agreed upon between the parties ;
- (f) where the works to be executed consist of the laying of any underground service-line immediately attached, or intended to be immediately attached, to a distributing main, the licensee

shall give to the repairing authority or the owner, as the case may be, not less than forty-eight hours' notice in writing of his intention to execute such works ;

- (g) where the works to be executed consist of the repair, renewal or amendment of existing works of which the character or position is not to be altered, the licensee shall, except in cases of emergency, give to the repairing authority, or to the owner, as the case may be, not less than forty-eight hours' notice in writing of his intention to execute such works, and, on the expiry of such notice, such works shall be commenced forthwith and shall be carried on with all reasonable despatch, and, if possible, both by day and by night until completed.

(2) Where the licensee makes default in complying with any of these provisions, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

(3) Notwithstanding anything in this section, the licensee may, in case of emergency due to the breakdown of an underground electric supply-line, after giving notice in writing to the repairing authority or the owner, as the case may be, of his intention to do so, place an aerial line without complying with the provisions of sub-section (1) :

Provided that such aerial line shall be used only until the defect in the underground electric supply-line can be made good, and in no case (unless with the written consent of the Local Government) for a period exceeding six weeks, and shall be removed as soon as may be after such defect is removed.

14. (1) Any licensee may alter the position of any pipe (not forming, in a case where the licensee is not a local authority, part of a local authority's main sewer), or of any wire under or over any place which he is authorized to open or break up, if such pipe or wire is likely to interfere with the exercise of his powers under this Act ; and any person may alter the position of any electric supply-lines or works of a licensee under or over any such place as aforesaid, if such electric supply-lines or works are likely to interfere with the lawful exercise of any powers vested in him.

Alteration of
pipes or wires.

(2) In any such case as aforesaid the following provisions shall, in the absence of an agreement to the contrary between the parties concerned, apply, namely :—

- (a) not less than one month before commencing any alteration, the licensee or other person desiring to make the same (hereinafter in this section referred to as "the operator") shall serve upon the person for the time being entitled to the pipe, wire, electric supply-lines or works, as the case may be (hereinafter in this section referred to as "the owner"), a notice in writing, describing the proposed alteration, together with a section and plan thereof on a scale sufficiently large to show clearly the details of the proposed works, and not in any case smaller than one inch to eight feet vertically and sixteen

inches to the mile horizontally, and intimating the time when it is to be commenced, and shall subsequently give such further information in relation thereto as the owner may desire ;

- (b) within fourteen days after the service of the notice, section and plan upon the owner, the owner may serve upon the operator a requisition to the effect that any question arising upon the notice, section or plan shall be determined by arbitration, and thereupon the matter shall, unless settled by agreement, be determined by arbitration ;
- (c) every arbitrator to whom a reference is made under clause (b) shall have regard to any duties or obligations which the owner is under, and may require the operator to execute any temporary or other works so as to avoid as far as possible interference therewith ;
- (d) where no requisition is served upon the operator under clause (b) within the time named, or where such a requisition has been served and the matter has been settled by agreement or determined by arbitration, the alteration may, upon payment or securing of any compensation accepted or determined by arbitration, be executed in accordance with the notice, section and plan and subject to such modifications as may have been determined by arbitration or agreed upon between the parties ;
- (e) the owner may, at any time before the operator is entitled to commence the alteration, serve upon the operator a statement in writing to the effect that he desires to execute the alteration himself and requires the operator to give such security for the repayment of any expenses as may be agreed upon or, in default of agreement, determined by arbitration ;
- (f) where a statement is served upon the operator under clause (e), he shall, not less than forty-eight hours before the execution of the alteration is required to be commenced, furnish such security and serve upon the owner a notice in writing intimating the time when the alteration is required to be commenced, and the manner in which it is required to be made ; and thereupon the owner may proceed to execute the alteration as required by the operator ;
- (g) where the owner declines to comply, or does not, within the time and in the manner prescribed by a notice served upon him under clause (f), comply with the notice, the operator may himself execute the alteration ;
- (h) all expenses properly incurred by the owner in complying with a notice served upon him by the operator under clause (f) may be recovered by him from the operator.

(3) Where the licensee or other person desiring to make the alteration makes default in complying with any of these provisions, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

Laying of electric supply-lines or other works near sewers, pipes or other electric supply-lines or works.

15. (1) Where—

- (a) the licensee requires to dig or sink any trench for laying down any new electric supply-lines or other works, near to which any sewer, drain, water-course or work under the control of the Local Government or of any local authority, or any pipe, syphon, electric supply-line or other work belonging to any duly authorized person, has been lawfully placed, or
- (b) any duly authorized person requires to dig or sink any trench for laying down or constructing any new pipes or other works, near to which any electric supply-lines or works of a licensee have been lawfully placed,

the licensee or such duly authorized person, as the case may be (hereinafter in this section referred to as "the operator"), shall, unless it is otherwise agreed upon between the parties interested or in case of sudden emergency, give to the Local Government or local authority, or to such duly authorized person, or to the licensee, as the case may be (hereinafter in this section referred to as "the owner"), not less than forty-eight hours' notice in writing before commencing to dig or sink the trench, and the owner shall have the right to be present during the execution of the work, which shall be executed to the reasonable satisfaction of the owner.

(2) Where the operator finds it necessary to undermine, but not to alter, the position of any pipe, electric supply-line or work, he shall support it in position during the execution of the work, and before completion shall provide a suitable and proper foundation for it where so undermined.

(3) Where the operator (being the licensee) lays any electric supply-line across, or so as to be liable to touch, any pipes, lines or service-pipes or service-lines belonging to any duly authorized person or to any person supplying, transmitting or using energy under this Act, he shall not, except with the written consent of such person and in accordance with section 34, sub-section (1), lay his electric supply-lines so as to come into contact with any such pipes, lines or service-pipes or service-lines.

(4) Where the operator makes default in complying with any of the provisions of this section, he shall make full compensation for any loss or damage incurred by reason thereof.

(5) Where any difference or dispute arises under this section, the matter shall be determined by arbitration.

(6) Where the licensee is a local authority, the references in this section to the local authority and to sewers, drains, water-courses or works under its control shall not apply.

Streets, railways, tramways, sewers, drains or tunnels broken up to be re-instated without delay.

16. (1) Where any person, in exercise of any of the powers conferred by or under this Act, opens or breaks up the soil or pavement of any street, railway or tramway, or any sewer, drain or tunnel, he shall—

- (a) immediately cause the part opened or broken up to be fenced and guarded ;
- (b) before sunset cause a light or lights, sufficient for the warning of passengers, to be set up and maintained until sunrise against or near the part opened or broken up ;
- (c) with all reasonable speed fill in the ground and reinstate and make good the soil or pavement, or the sewer, drain or tunnel, opened or broken up, and carry away the rubbish occasioned by such opening or breaking up ; and,
- (d) after reinstating and making good the soil or pavement, or the sewer, drain or tunnel, broken or opened up, keep the same in good repair for three months and for any further period, not exceeding nine months, during which subsidence continues.

(2) Where any person fails to comply with any of the provisions of sub-section (1), the person having the control or management of the street, railway, tramway, sewer, drain or tunnel in respect of which the default has occurred, may cause to be executed the work which the defaulter has delayed or omitted to execute, and may recover from him the expenses incurred in such execution.

(3) Where any difference or dispute arises as to the amount of the expenses incurred under sub-section (2), the matter shall be determined by arbitration.

17. (1) A licensee shall, before laying down or placing, within ten yards of any part of any telegraph-line, any electric supply-line or other works (not being service-lines immediately attached or intended to be immediately attached to a distributing main, or electric supply-lines for the repair, renewal or amendment of existing works of which the character or position is not to be altered), give not less than ten days' notice in writing to the telegraph-authority, specifying—

- (a) the course of the works or alterations proposed,
- (b) the manner in which the works are to be utilized,
- (c) the amount and nature of the energy to be transmitted, and
- (d) the extent to, and manner in, which (if at all) earth returns are to be used ;

and the licensee shall conform with such reasonable requirements, either general or special, as may be laid down by the telegraph-authority within that period for preventing any telegraph-line from being injuriously affected by such works or alterations :

Provided that, in case of emergency (which shall be stated by the licensee in writing to the telegraph-authority) arising from defects in any of the electric supply-lines or other works of the licensee, the licensee shall be required to give only such notice as may be possible after the necessity for the proposed new works or alterations has arisen.

(2) Where the works to be executed consist of the laying of any underground service-line immediately attached, or intended to be immediately attached, to a distributing main, the licensee shall, not less than forty-eight hours before commencing the work, serve upon the telegraph-authority a notice in writing of his intention to execute such works.

18. (1) Save as provided in section 13, sub-section (3), nothing in this Part shall be deemed to authorize or empower a licensee to place any aerial line along or across any street, railway, tramway, canal or waterway unless and until the Local Government has communicated to him a general approval in writing of the methods of construction which he proposes to adopt :

Provided that the communication of such approval shall in no way relieve the licensee of his obligations with respect to any other consent required by or under this Act.

(2) Where any aerial line has been placed or maintained by a licensee in breach of the provisions of sub-section (1), the Local Government may require the licensee forthwith to remove the same, or may cause the same to be removed and recover from the licensee the expenses incurred in such removal.

(3) Where any tree standing or lying near an aerial line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of energy, a Magistrate of the first class or, in a Presidency-town or Rangoon, the Commissioner of Police may, on the application of the licensee, cause the tree to be removed or otherwise dealt with as he thinks fit.

(4) When disposing of an application under sub-section (3), the Magistrate or Commissioner of Police, as the case may be, shall, in the case of any tree in existence before the placing of the aerial line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

19. (1) A licensee shall, in exercise of any of the powers conferred by or under this Act, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

(2) Save in the case provided for in section 12, sub-section (3), where any difference or dispute arises as to the amount or the application of such compensation, the matter shall be determined by arbitration.

Supply.

20. (1) A licensee or any person duly authorized by a licensee may, at any reasonable time, and on informing the occupier of his intention, enter any premises to which energy is or has been supplied by him, for the purpose of—

Power for licensee to enter premises and to remove fittings or other apparatus of licensee.

- (a) inspecting and testing the electric supply-lines, meters, fittings, works and apparatus for the supply of energy belonging to the licensee ; or
- (b) ascertaining the amount of energy supplied or the electrical quantity contained in the supply ; or
- (c) removing, where a supply of energy is no longer required, or where the licensee is authorized to take away and cut off such supply, any electric supply-lines, fittings, works or apparatus belonging to the licensee.

(2) A licensee or any person authorized as aforesaid may also, in pursuance of a special order in this behalf made by the District Magistrate or, in a Presidency-town or Rangoon, by the Commissioner of Police, and after giving not less than twenty-four hours' notice in writing to the occupier, enter any premises to which energy is or has been supplied, or is to be supplied, by him, for the purpose of examining and testing the electric wires, fittings, works and apparatus for the use of energy belonging to the consumer.

Restrictions on
licensee's control-
ling or interfering
with use of energy.

21. (1) A licensee shall not be entitled to prescribe any special form of appliance for utilizing energy supplied by him, or, save as provided by section 23, sub-section (2), or by section 26, sub-section (7), in any way to control or interfere with the use of such energy :

Provided that no person may adopt any form of appliance, or use the energy supplied to him, so as unduly or improperly to interfere with the supply by the licensee of energy to any other person.

(2) Where any difference or dispute arises as to whether a licensee has prescribed any appliance or controlled or interfered with the use of energy in contravention of sub-section (1), the matter shall be either referred to an Electric Inspector and decided by him or, if the licensee or consumer so desires, determined by arbitration.

22. Where energy is supplied by a licensee, every person within the area of supply shall, except in so far as is otherwise provided by the terms and conditions of the license, be entitled, on application, to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply :

Obligation on
licensee to supply
energy.

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to pay to him such minimum annual sum as will give him a reasonable return on the capital expenditure, and will cover other standing charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined in case of difference or dispute by arbitration.

23. (1) A licensee shall not, in making any agreement for the supply of energy, show undue preference to any person, but may, save as aforesaid, make such charges for the supply of energy as may be agreed upon, not exceeding the limits imposed by his license.

Charges for energy
to be made without
undue preference.

(2) No consumer shall, except with the consent in writing of the licensee, use energy supplied to him under one method of charging in a manner for which a higher method of charging is in force.

24. Where any person neglects to pay any charge for energy or any other sum due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the

Discontinuance of
supply to consumer
neglecting to pay
charge.

supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and re-connecting the supply, are paid, but no longer :

Provided that where any difference or dispute has been referred under this Act to an Electric Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision.

25. Where any electric supply-lines, meters, fittings, works or apparatus belonging to a licensee are placed in or upon any premises, not being in the possession of the licensee, for the purpose of supplying energy, such electric supply-lines, meters, fittings, works and apparatus shall not be liable to be taken in execution under any process of any Civil Court or in any proceedings in insolvency against the person in whose possession the same may be.

Exemption of electric supply-lines or other apparatus from attachment in certain cases.

26. (1) In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter :

Meters.

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.

(2) Where the consumer so enters into an agreement for the hire of a meter, the licensee shall keep the meter correct, and, in default of his doing so, the consumer shall, for so long as the default continues, cease to be liable to pay for the hire of the meter.

(3) Where the meter is the property of the consumer, he shall keep the meter correct, and, in default of his doing so, the licensee may, after giving him seven days' notice, for so long as the default continues, cease to supply energy through the meter.

(4) The licensee or any person duly authorized by the licensee shall, at any reasonable time and on informing the consumer of his intention, have access to, and be at liberty to inspect and test, and for that purpose, if he thinks fit, take off and remove, any meter referred to in sub-section (1) ; and, except where the meter is so hired as aforesaid, all reasonable expenses of, and incidental to, such inspecting, testing, taking off and removing shall, if the meter is found to be otherwise than correct, be recovered from the consumer ; and, where any difference or dispute arises as to the amount of such reasonable expenses, the matter shall be referred to an Electric Inspector, and the decision of such Inspector shall be final :

Provided that the licensee shall not be at liberty to take off or remove any such meter if any difference or dispute of the nature described in sub-section (6) has arisen until the matter has been determined as therein provided.

(5) A consumer shall not connect any meter referred to in sub-section (1) with any electric supply-line through which energy is supplied by a licensee, or disconnect the same from any such electric supply-line, without giving to the licensee not less than forty-eight hours' notice in writing of his intention.

(6) Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electric Inspector, or by a competent person specially appointed by the Local Government in this behalf; and, where the meter has, in the opinion of such Inspector or person, ceased to be correct, such Inspector or person shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time as the meter shall not, in the opinion of such Inspector or person, have been correct, on the basis of the previous supply; and where the matter has been decided by any person other than the Electric Inspector, an appeal shall lie to the Inspector, whose decision shall in every case be final; but, save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity.

(7) In addition to any meter which may be placed upon the premises of a consumer in pursuance of the provisions of sub-section (1), the licensee may place upon such premises such meter, maximum demand indicator or other apparatus as he may think fit for the purpose of ascertaining or regulating either the amount of energy supplied to the consumer, or the number of hours during which the supply is given, or the rate per unit of time at which energy is supplied to the consumer, or any other quantity or time connected with the supply:

Provided that the meter, indicator or apparatus shall not, in the absence of an agreement to the contrary, be placed otherwise than between the distributing mains of the licensee and any meter referred to in sub-section (1):

Provided, also, that, where the charges for the supply of energy depend wholly or partly upon the reading or indication of any such meter, indicator or apparatus as aforesaid, the licensee shall, in the absence of an agreement to the contrary, keep the meter, indicator or apparatus correct; and the provisions of sub-sections (4), (5) and (6) shall in that case apply as though the meter, indicator or apparatus were a meter referred to in sub-section (1).

Explanation.—A meter shall be deemed to be "correct" if it registers the amount of energy supplied, or the electrical quantity contained in the supply, within the prescribed limits of error, and a maximum demand indicator or other apparatus referred to in sub-section (7) shall be deemed to be "correct" if it complies with such conditions as may be prescribed in the case of any such indicator or other apparatus.

27. Notwithstanding anything in this Act, the Local Government may, by order in writing, and subject to such conditions and restrictions, if any, as it thinks fit to impose, authorise any licensee to supply energy to any person outside the area of supply, and to lay down or place electric supply-lines for that purpose:

Supply of energy
outside area of sup-
ply.

Provided, first, that no such authority shall be conferred on the licensee within the area of supply of another licensee without that licensee's consent, unless the Local Government considers that his consent has been unreasonably withheld :

Provided, secondly, that such authority shall not be conferred unless the person to whom the supply is to be given has entered into a specific agreement with the licensee for the taking of such supply :

Provided, thirdly, that a licensee on whom such authority has been conferred shall not be deemed to be empowered outside the area of supply to open or break up any street, or any sewer, drain or tunnel in or under any street, railway or tramway, or to interfere with any telegraph-line, without the written consent of the local authority or person by whom such street, sewer, drain or tunnel is repairable, or of the telegraph-authority, as the case may be :

Provided, fourthly, that, save as aforesaid, the provisions of this Act shall apply in the case of any supply authorised under this section as if the said supply were made within the area of supply.

PART III.

SUPPLY, TRANSMISSION AND USE OF ENERGY BY NON-LICENSEES.

28. (1) No person, other than a licensee, shall engage in the business of supplying energy except with the previous sanction of the Local Government and in accordance with such conditions as the Local Government may fix in this behalf, and any agreement to the contrary shall be void :

Sanction required by non-licensees in certain cases.

Provided that such sanction shall not be given in any case unless the Local Government considers that, having regard to the extent of the proposed supply and the other circumstances of the case, the obtaining of a license under Part II would be attended with undue expense or delay .

Provided also that such sanction shall not be given within the area for which a local authority is constituted, without that local authority's consent, or within the area of supply of any licensee, without that licensee's consent, unless the Local Government considers that consent has been unreasonably withheld.

(2) Where any difference or dispute arises as to whether any person is or is not engaging, or about to engage, in the business of supplying energy within the meaning of sub-section (1), the matter shall be referred to the Local Government, and the decision of the Local Government thereon shall be final.

29. (1) The local authority may, by order in writing, confer and impose upon any person, who has obtained the sanction of the Local Government under section 28 to engage in the business of supplying energy, all or any of the powers and liabilities of a licensee under sections 12 to 19, both inclusive, and the provisions of the said sections shall thereupon apply as if such person were a licensee under Part II.

Power for non-licensees to break up streets.

(2) A local authority, not being a licensee, shall, for the purpose of lighting any street, have the powers and be subject to the liabilities

respectively conferred and imposed by sections 12 to 19, both inclusive, so far as applicable, as if it were a licensee under Part II.

(3) In cases other than those for which provision is made by sub-section (1), the person responsible for the repair of any street may, by order in writing, confer and impose upon any person who proposes to transmit energy in such street all or any of the powers and liabilities of a licensee under sections 12 to 19 (both inclusive), in so far as the same relate to—

- (a) opening or breaking up of the soil or pavement of such street, or
- (b) laying down or placing electric supply-lines in, under, along or across such street, or
- (c) repairing, altering or removing such electric supply-lines,

and thereupon the provisions of the said sections shall, so far as aforesaid, apply to such person as if he were a licensee under Part II.

(4) If no order is made within fourteen days after the receipt of an application for the same under sub-section (1) or sub-section (3), the order so applied for shall be deemed to have been refused, and every order, and every refusal to make an order, under sub-section (1) or sub-section (3), shall be subject to revision by the Local Government.

Control of transmission and use of energy. 30. (1) No person, other than a licensee duly authorized under the terms of his license, shall transmit or use energy at a rate exceeding two hundred and fifty watts,—

- (a) in any street, or
- (b) in any place,
 - (i) in which one hundred or more persons are likely ordinarily to be assembled, or
 - (ii) which is a factory within the meaning of the Indian Factories Act, 1881, or
 - (iii) which is a mine within the meaning of the Indian Mines Act, 1901,

XV of 1881.

VIII of 1901.

without giving not less than seven clear days' notice in writing of his intention to the District Magistrate or, in a Presidency-town or Rangoon, to the Commissioner of Police, and complying with such of the provisions of Part IV, and of the rules made thereunder, as may be applicable :

Provided that nothing in this section shall apply to energy used for the public carriage of passengers, animals or goods on, or for the lighting or ventilation of the rolling-stock of, any railway or tramway subject to the provisions of the Indian Railways Act, 1890 :

")

IX of 1890.

Provided, also, that the Local Government may, by general or special order and subject to such conditions and restrictions as may be specified therein, exempt from the application of this section or of any such provision or rule as aforesaid any person or class of persons using energy on premises upon or in connection with which it is generated, or using energy supplied under Part II in any place specified in clause (b)

(2) Where any difference or dispute arises as to whether a place is or is not one in which one hundred or more persons are likely ordinarily to be assembled, the matter shall be referred to the Local Government, and the decision of the Local Government thereon shall be final.

(3) The provisions of this section shall be binding on the Crown.

PART IV.

GENERAL.

Protective Clauses.

31. No person shall, in the generation, transmission, supply or use of energy, in any way injure any railway, tramway, canal or water-way or any dock, wharf or pier vested in or controlled by a local authority, or obstruct or interfere with the traffic on any railway, tramway, canal or water-way.

Protection of
railways and canals,
docks, wharves and
piers.

32. (1) Every person generating, transmitting, supplying or using energy (hereinafter in this section referred to as the "operator") shall take all reasonable precautions in constructing, laying down and placing his electric supply-lines and other works and in working his system, so as not injuriously to affect, whether by induction or otherwise, the working of any wire or line used for the purpose of telegraphic, telephonic or electric-signalling communication, or the currents in such wire or line.

Protection of tele-
graphic, telephonic
and electric-signal-
ling lines.

(2) Where any difference or dispute arises between the operator and the telegraph-authority as to whether the operator has constructed, laid down or placed his electric supply-lines or other works, or worked his system, in contravention of sub-section (1), or as to whether the working of any wire, line or current is or is not injuriously affected thereby, the matter shall be referred to the Governor General in Council; and the Governor General in Council, unless he is of opinion that the wire or line has been placed in unreasonable proximity to the electric supply-lines or works of the operator after the construction of such lines or works, may direct the operator to make such alterations in, or additions to, his system as may be necessary in order to comply with the provisions of this section, and the operator shall make such alterations or additions accordingly:

Provided that nothing in this sub-section shall apply to the repair, renewal or amendment of any electric supply-line so long as the course of the electric supply-line and the amount and nature of the energy transmitted thereby are not altered.

(3) Where the operator makes default in complying with the requirements of this section, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

Explanation.—For the purposes of this section, a telegraph-line shall be deemed to be injuriously affected if telegraphic, telephonic or electric signalling communication by means of such line is, whether through

induction or otherwise, prejudicially interfered with by an electric supply-line or work or by any use made thereof.

33. (a) (1) Every person shall, within twenty-four hours of the occurrence, send to the Electric Inspector, and also to the District Magistrate or, in a Presidency-town or Rangoon, to the Commissioner of Police, notice in writing of any accident in connection with the generation, transmission, supply or use of energy resulting or likely to have resulted in loss of life or personal injury in any part of such person's works or electric supply-lines, or in connection with the same, and also notice of any loss of life or personal injury actually occasioned by any such accident.

(2) The Local Government may, if it thinks fit, require any Electric Inspector, or any other competent person appointed by it in this behalf, to inquire and report—

- (a) as to the cause of any accident affecting the safety of the public, which may have been occasioned by or in connection with the generation, transmission, supply or use of energy, or
- (b) as to the manner in, and extent to, which the provisions of this Act or of any license or rules thereunder, so far as those provisions affect the safety of any person, have been complied with.

Prohibition of connection with earth and power for Government to interfere in certain cases of default.

34. (1) No person shall, in the generation, transmission, supply or use of energy, permit any part of his electric supply-lines to be connected with earth except so far as may be prescribed in this behalf or may be specially sanctioned by the Governor General in Council.

(2) If at any time it is established to the satisfaction of the Local Government—

- (a) that any part of an electric supply-line is connected with earth contrary to the provisions of sub-section (1), or
- (b) that any electric supply-lines or other works for the generation, transmission, supply or use of energy are attended with danger to the public safety or to human life or injuriously affect any telegraph-line, or
- (c) that any electric supply-lines or other works are defective so as not to be in accordance with the provisions of this Act or of any rule thereunder,

the Local Government may, by order in writing, specify the matter complained of and require the owner or user of such electric supply-lines or other works to remedy it in such manner as shall be specified in the order, and may also in like manner forbid the use of any electric supply-line or works until the order is complied with or for such time as is specified in the order.

Case-law :—(a) Scope of section, 39 M. 686 ; meaning of ' every person ', *ibid*.

Administration and rules.

35. (1) The Governor General in Council may, for the whole or any part of British India, and each Local Government may, for the whole or any part of the province, by notification in the Gazette of India or the local official Gazette, as the case may be, constitute an Advisory Board.

(2) Every such Board shall consist of a chairman and not less than two other members.

(3) The chairman and, where there are more than two other members, two of the other members, or, where there are only two other members, one of the other members, shall be nominated by the Governor General in Council or the Local Government, as the case may be, and the remaining members shall be nominated by such local authorities, Chambers of Commerce or other Associations as the Governor General in Council or the Local Government, as the case may be, may direct.

(4) The Governor General in Council or the Local Government, as the case may be, may, by general or special order,—

- (a) define the duties and regulate the procedure of any such Board,
- (b) determine the tenure of office of the members of any such Board, and
- (c) give directions as to the payment of fees to, and the travelling expenses incurred by, any member of any such Board in the performance of his duty.

36. (1) The Governor General in Council may, by notification in the Gazette of India, appoint duly qualified persons to be Electric Inspectors, and every Electric Inspector so appointed shall exercise the powers and perform the functions of an Electric Inspector under this Act within such areas and subject to such restrictions as the Governor General in Council may direct.

(2) The Local Government may, by notification in the local official Gazette, appoint duly qualified persons to be Electric Inspectors within such areas as may be assigned to them respectively; and every Inspector so appointed shall exercise the powers and perform the functions of an Electric Inspector under this Act subject to such restrictions as the Local Government may direct.

(3) In the absence of express provision to the contrary in this Act or any rule thereunder, an appeal shall lie from the decision of an Electric Inspector to the Governor General in Council or the Local Government, as the case may be.

37. (1) The Governor General in Council may make rules, for the whole or any part of British India, to regulate the generation, transmission, supply and use of energy, and, generally, to carry out the purposes and objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the form of applications for licenses and the payments to be made in respect thereof;

- (b) regulate the publication of notices ;
- (c) prescribe the manner in which objections with reference to any application under Part II are to be made ;
- (d) provide for the preparation and submission of accounts by licensees in a specified form ;
- (e) provide for the securing of a regular, constant and sufficient supply of energy by licensees to consumers and for the testing at various parts of the system of the regularity and sufficiency of such supply, and for the examination of the records of such tests by consumers ;
- (f) provide for the protection of persons and property from injury by reason of contact with, or the proximity of, or by reason of the defective or dangerous condition of, any appliance or apparatus used in the generation, transmission, supply or use of energy ;
- (g) for the purposes of electric traction regulate the employment of insulated returns, or of uninsulated metallic returns of low resistance, in order to prevent fusion or injurious electrolytic action of or on metallic pipes, structures or substances, and to minimise, as far as is reasonably practicable, injurious interference with the electric wires, supply-lines and apparatus of parties other than the owners of the electric traction system, or with the currents therein, whether the earth is used as a return or not ;
- (h) provide for preventing telegraph-lines and magnetic observatories or laboratories from being injuriously affected by the generation, transmission, supply or use of energy ;
- (i) prescribe the qualifications to be required of Electric Inspectors ,
- (j) authorize any Electric Inspector or other officer of a specified rank and class to enter, inspect and examine any place, carriage or vessel in which he has reason to believe any appliance or apparatus used in the generation, transmission, supply or use of energy to be, and to carry out tests therein, and to prescribe the facilities to be given to such Inspectors or officers for the purposes of such examinations and tests ; and
- (k) authorize and regulate the levy of fees for any such testing or inspection and, generally, for the services of Electric Inspectors under this Act.

(3) In making any rule under this Act, the Governor General in Council may direct that every breach thereof shall be punishable with fine which may extend to three hundred rupees, and, in the case of a continuing breach, with a further daily fine which may extend to fifty rupees.

Further provisions
respecting rules.

38. (1) The power to make rules under section 37 shall be subject to the condition of the rules being made after previous publication.

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897, as that after which a draft of rules proposed to be made under section 37 will be taken into consideration X of 1897.

shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(3) Any rule to be made under this Act shall, before it is published for criticism under sub-section (2), be referred to the Advisory Board (if any) constituted for the whole of British India, or, if no such Board has been constituted, then to such Board or Boards (if any) as the Governor General in Council may direct; and the rule shall not be so published until such Board or Boards (if any) has or have reported as to the expediency of making the proposed rule and as to the suitability of its provisions.

(4) All rules made under section 37 shall be published in the Gazette of India, and on such publication shall have effect as if enacted in this Act.

Criminal Offences and Procedure.

39. Whoever dishonestly abstracts, consumes or uses any energy shall be deemed to have committed theft within the meaning of the Indian Penal Code; and the existence of artificial means for such abstraction shall be *prima facie* evidence of such dishonest abstraction.

XLV of 1860.

40. Whoever maliciously causes energy to be wasted or diverted, or, with intent to cut off the supply of energy, cuts or injures, or attempts to cut or injure, any electric supply-line or works, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Penalty for maliciously wasting energy injuring works.

41. Whoever, in contravention of the provisions of section 28, engages, in the business of supplying energy shall be punishable with fine which may extend to three thousand rupees, and, in the case of a continuing contravention, with a daily fine which may extend to three hundred rupees.

Penalty for unauthorized supply of energy by non-licensees.
Penalty for illegal or defective supply or for non-compliance with order.

42. Whoever—

- (a) being a licensee, save as permitted under section 27 or section 51 or by his license, supplies energy or lays down or places any electric supply-line or works outside the area of supply; or
- (b) being a licensee, in contravention of the provisions of this Act or of the rules thereunder or in breach of the conditions of his license and without reasonable excuse, the burden of proving which shall lie on him, discontinues the supply of energy or fails to supply energy; or
- (c) makes default in complying with any order issued to him under section 34, sub-section (2);

shall be punishable with fine which may extend to one thousand rupees, and, in the case of a continuing offence or default, with a daily fine which may extend to one hundred rupees.

43. Whoever, in contravention of the provisions of section 30, transmits or uses energy without giving the notice required thereby, shall be punishable with fine which may extend to five hundred rupees, and, in the case of a continuing offence, with a daily fine which may extend to fifty rupees.

Penalty for illegal transmission or use of energy.

44. Whoever—

- (a) connects any meter referred to in section 26, sub-section (1), or any meter, indicator or apparatus referred to in section 26, sub-section (7), with any electric supply-line through which energy is supplied by a licensee, or disconnects the same from any such electric supply-line, without giving to the licensee forty-eight hours' notice in writing of his intention ; or
- (b) lays, or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee, without such licensee's consent ; or
- (c) maliciously injures any meter referred to in section 26, sub-section (1), or any meter, indicator or apparatus referred to in section 26, sub-section (7), or wilfully or fraudulently alters the index of any such meter, indicator or apparatus, or prevents any such meter, indicator or apparatus from duly registering ; or
- (d) improperly uses the energy of a licensee ;

shall be punishable with fine which may extend to three hundred rupees, and, in the case of a continuing offence, with a daily fine which may extend to thirty rupees ; and the existence of artificial means for making such connection as is referred to in clause (a) or such communication as is referred to in clause (b) or for causing such alteration or prevention as is referred to in clause (c) or for facilitating such improper use as is referred to in clause (d) shall, where the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, be *prima facie* evidence that such connection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and wilfully caused by such consumer.

Penalty for extinguishing public lamps.

45. Whoever maliciously extinguishes any public lamp shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to three hundred rupees, or with both.

46. Whoever negligently causes energy to be wasted or diverted, or negligently breaks, throws down or damages any electric supply-line, post, pole or lamp or other apparatus connected with the supply of energy, shall be punishable with fine which may extend to two hundred rupees.

Penalty for negligently wasting energy or injuring works.

47. Whoever, in any case not already provided for by sections 39 to 46 (both inclusive), makes default in complying with any of the provisions of this Act, or with any order issued under it, or, in the case of a licensee, with any of the conditions of his license, shall be punishable with fine which may extend to one hundred rupees, and, in the case of a continuing default, with a daily fine which may extend to twenty rupees :

Penalty for offences not otherwise provided for.

Provided that, where a person has made default in complying with any of the provisions of sections 13, 14, 15, 17 and 32, as the case may be, he shall not be so punishable if the Court is of opinion that the case was one of emergency and that the offender complied with the said provisions as far as was reasonable in the circumstances.

48. The penalties imposed by sections 39 to 47 (both inclusive) shall be in addition to, and not in derogation of, any liability in respect of the payment of compensation or, in the case of a licensee, the revocation of his license, which the offender may have incurred.

Penalties not to affect other liabilities.

49. The provisions of sections 39, 40, 44, 45 and 46 shall, so far as they are applicable, be deemed to apply also when the acts made punishable thereunder are committed in the case of energy supplied by or of works belonging to the Government.

Penalties where works belong to Government.

50. No prosecution shall be instituted against any person for any offence against this Act or any rule, license or order thereunder, except at the instance of the Government or an Electric Inspector, or of a person aggrieved by the same.

Institution of prosecutions.

Supplementary.

51. Notwithstanding anything in sections 12 to 16 (both inclusive) and sections 18 and 19, the Governor General in Council may, by order in writing, for the placing of appliances and apparatus for the transmission of energy, confer upon any public officer or licensee, subject to such conditions and restrictions (if any) as the Governor General in Council may think fit to impose, and to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph-authority possesses under that Act, with respect to the placing of telegraph-lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained.

Exercise in certain cases of powers of telegraph-authority.

III of 1885.

52. Where any matter is, by or under this Act, directed to be determined by arbitration, the matter shall, unless it is otherwise expressly provided in the license of a licensee, be determined by such person or persons as the Local Government may nominate in that behalf on the application of either party; but in all other respects the arbitration shall be subject to the provisions of the Indian Arbitration Act, 1899.

Arbitration.

IX of 1899.

Service of notices, orders or documents. 53. (1) Every notice, order or document by or under this Act required or authorized to be addressed to any person may be served by post or left,—

- (a) where the Government is the addressee, at the office of the Secretary in the Public Works Department ;
- (b) where a local authority is the addressee, at the office of the local authority ;
- (c) where a company is the addressee, at the registered office of the Company or, in the event of the registered office of the Company not being in India, at the head office of the Company in India ;
- (d) where any other person is the addressee, at the usual or last known place of abode or business of the person.

(2) Every notice, order or document by or under this Act required or authorized to be addressed to the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the "owner" or "occupier" of the premises (naming the premises), and may be served by delivering it, or a true copy thereof, to some person on the premises, or, if there is no person on the premises to whom the same can with reasonable diligence be delivered, by affixing it on some conspicuous part of the premises.

Recovery of sums recoverable under certain provisions of Act. 54. Every sum declared to be recoverable by section 5, clause (f), section 6, sub-section (2), section 14, sub-section (2), clause (h), section 16, sub-section (2), section 18, sub-section (2) or sub-section (4), or section 26, sub-section (4), and every fee leviable under this Act, may be recovered, on application to a Magistrate having jurisdiction where the person liable to pay the same is for the time being resident, by the distress and sale of any moveable property belonging to such person.

Delegation of certain functions of Local Government to Electric Inspectors. 55. The Local Government may, by general or special order, authorize the discharge of any of its functions under section 13 or section 18, or clause V, sub-clause (2), or clause XIII of the Schedule by an Electric Inspector.

Protection for acts done in good faith. 56. No suit, prosecution or other proceeding shall lie against any public officer, or any servant of a local authority, for anything done, or in good faith purporting to be done, under this Act.

Amendment of the Land Acquisition Act, 1894. 57. (1) In section 40, sub-section (1), clause (b), and section 41, sub-section (5), of the Land Acquisition Act, 1894, the term "work" shall be deemed to include electrical energy supplied, or to be supplied, by means of the work to be constructed.

(2) The Local Government may, if it thinks fit, on the application of any person, not being a company, desirous of obtaining any land for the purposes of his undertaking, direct that he may acquire such land

of 1894. under the provisions of the Land Acquisition Act, 1894, in the same manner and on the same conditions as it might be acquired if the person were a company.

III of 1908. Repeals and 58. (1) The Indian Electricity Act, 1903, is hereby repealed :

Provided that every application for a license made and every license granted under the said Act shall be deemed to have been made and granted under this Act.

(2) Nothing in this Act shall be deemed to affect the terms of any license which was granted, or of any agreement which was made, by or with the sanction of the Government for the supply or use of electricity before the commencement of this Act.

THE SCHEDULE.

PROVISIONS TO BE DEEMED TO BE INCORPORATED WITH, AND TO FORM PART OF, EVERY LICENSE GRANTED UNDER PART II, SO FAR AS NOT ADDED TO, VARIED OR EXCEPTED BY THE LICENSE.

[See section 3, sub-section (2), clause (f).]

Security and accounts.

Security for execution of works of licensee not being local authority.

I. Where the licensee is not a local authority, the following provisions as to giving security shall apply, namely :—

(a) The licensee shall, within the period fixed in that behalf by his license, or any longer period which the Local Government may substitute therefor by order under section 4, sub-section (3), clause (b), of the Indian Electricity Act, 1910, before exercising any of the powers by the license conferred on him in relation to the execution of works, show, to the satisfaction of the Local Government, that he is in a position fully and efficiently to discharge the duties and obligations imposed upon him by the license throughout the area of supply.

(b) The licensee shall also, within the period fixed in that behalf by his license, or any longer period which the Local Government may substitute therefor by order under section 4, sub-section (3), clause (b), of the Indian Electricity Act, 1910, and before exercising any of the powers conferred on him in relation to the execution of works, deposit or secure to the satisfaction of the Local Government such sum (if any) as may be fixed by the license or, if not so fixed, by the Local Government.

(c) The said sum deposited or secured by the licensee under the provisions of this clause shall be repaid or released to him on the completion of the works or at such earlier date or dates and by such instalments, as may be approved by the Local Government.

Audit of accounts of licensee not being local authority.

II. Where the licensee is not a local authority, the following provisions as to the audit of accounts shall apply, namely :—

(a) The annual statement of accounts of the undertaking shall, before being rendered under section 11 of the Indian Electricity Act, 1910, be examined and audited by such person as the Local Government may appoint or approve in this behalf, and the remuneration of the auditor

shall be such as the Local Government may direct, and his remuneration and all expenses incurred by him in or about the execution of his duties, to such an amount as the Local Government shall approve, shall be paid by the licensee on demand.

(b) The licensee shall afford to the auditor, his clerks and assistants, access to all such books and documents relating to the undertaking as are necessary for the purposes of the audit, and shall, when required, furnish to him and them all vouchers and information requisite for that purpose, and afford to him and them all facilities for the proper execution of his and their duty.

(c) The audit shall be made and conducted in such manner as the Local Government may direct.

(d) Any report made by the auditor, or such portion thereof as the Local Government may direct, shall be appended to the annual statement of accounts of the licensee, and shall thenceforth form part thereof.

(e) Notwithstanding the foregoing provisions of this clause, the Local Government may, if it thinks fit, accept the examination and audit of an auditor appointed by the licensee.

III. The licensee shall, unless the Local Government otherwise directs, at all times keep the accounts of the capital employed for the purposes of the undertaking distinct from the accounts kept by him of any other undertaking or business.

Compulsory works and supply.

IV. The licensee shall, within a period of three years after the commencement of the license, execute to the satisfaction of the Local Government all such works as may be specified, in the license in this behalf or, if not so specified, as the Local Government may, by order in writing issued within six months of the date of the commencement of the license, direct.

Execution of work after commencement of license.

V. (1) Where, after the expiration of two years and six months from the commencement of the license, a requisition is made by six or more owners or occupiers of premises in or upon any street or part of a street within the area of supply or by the Local Government or a local authority charged with the public lighting thereof, requiring the licensee to provide distributing mains throughout such street or part thereof, the licensee shall comply within six months with the requisition, unless,—

- Provisions as to laying down of further distributing mains.
- (a) where it is made by such owners or occupiers as aforesaid, the owners or occupiers making it do not, within fourteen clear days after the service on them by the licensee of a notice in writing in this behalf, tender to the licensee a written contract duly executed and with sufficient security binding themselves to take, or guaranteeing that there shall be taken, a supply of energy for not less than two years to such amount as will in the aggregate produce annually, at the current rates charged by the licensee, a reasonable return to the licensee ; or,

- (b) where it is made by the Local Government or a local authority, the Local Government or local authority, as the case may be, does not, within the like period, tender a like contract binding itself to take a supply of energy for not less than seven years for the public lamps in such street or part thereof.

(2) Where any difference or dispute arises between the licensee and such owners or occupiers as to the sufficiency of the security offered under this clause, or as to the amount of energy to be taken or guaranteed as aforesaid, the matter shall be referred to the Local Government, and either decided by it or, if it so directs, determined by arbitration.

(3) Every requisition under this clause shall be signed by the maker or makers thereof and shall be served on the licensee.

(4) Every requisition under this clause shall be in a form to be prescribed by rules under the Indian Electricity Act, 1910; and copies of the form shall be kept at the office of the licensee and supplied free of charge to any applicant.

VI. (1) Where a requisition is made by the owner or occupier of any premises situate within one hundred yards from any distributing main requiring the licensee to supply energy for such premises, the licensee shall, within one month from the making of the requisition, supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply, energy in accordance with the requisition :

Provided, first, that the licensee shall not be bound to comply with any such requisition unless and until the person making it—

- (a) within fourteen days after the service on him by the licensee of a notice in writing in this behalf, tenders to the licensee a written contract, in a form approved by the Local Government, duly executed and with sufficient security, binding himself to take a supply of energy for not less than two years to such amount as will produce, at current rates charged by the licensee, a reasonable return to the licensee, and,
- (b) if required by the licensee so to do, pays to the licensee the cost of so much of any service-line as may be laid down or placed for the purposes of the supply upon the property in respect of which the requisition is made, and of so much of any service-line as it may be necessary for the said purposes to lay down or place beyond one hundred feet from the licensee's distributing main, although not on that property :

Provided, secondly, that the licensee shall be entitled to discontinue such supply—

- (a) if the owner or occupier of the property to which the supply is made has not already given security, or if any security given by him has become invalid or insufficient, and such owner or occupier fails to furnish security or to make up the original security to a sufficient amount, as the case may be, within seven days after the service upon him of notice from the licensee requiring him so to do, or

- (b) if the owner or occupier of the property to which the supply is made adopts any appliance, or uses the energy supplied to him by the licensee for any purposes, or deals with it in any manner, so as unduly or improperly to interfere with the efficient supply of energy to any other person by the licensee, or
- (c) if the electric wires, fittings, works and apparatus in such property are not in good order and condition, and are consequently likely to affect injuriously the use of energy by the licensee, or by other persons, or
- (d) if the owner or occupier makes any alterations of, or additions to, any electric wires, fittings, works or apparatus within such property as aforesaid, and does not notify the same to the licensee before the same are connected to the source of supply, with a view to their being examined and tested :

Provided, thirdly, that the maximum rate per unit of time at which the owner or occupier shall be entitled to be supplied with energy shall not exceed what is necessary for the maximum consumption on his premises, and, where the owner or occupier has required a licensee to supply him at a specified maximum rate, he shall not be entitled to alter that maximum, except after one month's notice in writing to the licensee, and the licensee may recover from the owner or occupier any expenses incurred by him by reason of such alteration in respect of the service-lines by which energy is supplied to the property beyond one hundred feet from the licensee's distributing main, or in respect of any fittings or apparatus of the licensee upon that property : and

Provided, fourthly, that, in the event of any requisition being made for a supply of energy from any distributing main of which the licensee can prove, to the satisfaction of an Electric Inspector,—

- (a) that it is already loaded up to its full current-carrying capacity, or
- (b) that, in case of a larger amount of current being transmitted by it, the loss of pressure will seriously affect the efficiency of the supply to other consumers in the vicinity,

the licensee may refuse to accede to the requisition for such reasonable period, not exceeding six months, as such Inspector may think sufficient for the purpose of amending the distributing main or laying down or placing a further distributing main.

(2) Any service-line laid for the purpose of supply in pursuance of a requisition under sub-clause (1) shall, notwithstanding that a portion of it may have been paid for by the person making the requisition, be maintained by the licensee.

(3) Where any difference or dispute arises as to the amount of energy to be taken or guaranteed as aforesaid, or as to the cost of any service-line or as to the sufficiency of the security offered by any owner or occupier, or as to the improper use of energy, or as to any alleged defect in any wires, fittings, works or apparatus, or as to the amount of the expenses incurred under the third proviso to sub-clause (1), the matter shall be referred to an Electric Inspector and decided by him.

(4) Every requisition under this clause shall be signed by the maker or makers thereof and shall be served on the licensee.

(5) Every requisition under this clause shall be in a form to be prescribed by rules under the Indian Electricity Act, 1910; and copies of the form shall be kept at the office of the licensee and supplied free of charge to any applicant.

VII. (1) Where an application is made by any person for the supply of energy within the area of supply, for any premises not situate within one hundred yards from any distributing main, or in any street in which distributing mains have not already been laid down or placed, and where a special agreement has been entered into to give and receive such supply, the licensee shall, before commencing to lay down or place in any such street any electric supply-line, serve upon the local authority (if any) and upon the owner or occupier of all premises abutting on so much of the street as lies between the points of origin and termination of the electric supply-line so to be laid down or placed [1] one month's notice [1] stating that the licensee intends to lay down or place the electric supply-line, and intimating that, if within the said period the local authority or any two or more of such owners or occupiers require in accordance with the provisions of the license that a supply shall be given for any public lamps or to their premises, as the case may be, the necessary distributing main will be laid down or placed by the licensee at the same time as the electric supply-line intended for the particular person.

(2) Where any such special agreement as is referred to in sub-clause (1) has been entered into between the licensee and any person, the licensee shall supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply, energy in such quantities as may have been agreed upon, and the provisions contained in the first, second, third and fourth provisos to sub-clause (1) and in sub-clauses (2) and (3) of clause VI shall, so far as may be, apply to every case in which energy is supplied under this clause as if such person had made a requisition under clause VI.

VIII. (1) Where a requisition is made by the Local Government or by a local authority requiring the licensee to supply for a period of not less than seven years energy for any public lamps within the distance of one hundred yards from any distributing main, the licensee shall supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply, energy for such lamps in such quantities as the Local Government or the local authority, as the case may be, may require.

(2) The provisions of sub-clause (b) of the first proviso, of sub-clauses (c) and (d) of the second proviso, and of the third and fourth provisos to sub-clause (1) and the provisions of sub-clauses (2) and (3) of

Leg. Changes:—[1] For the words "a notice" the words "one month's notice" were substituted by Act X of 1914.

clause VI shall, so far as may be, apply to every case in which a requisition for the supply of energy is made under this clause as if the Local Government or local authority were an owner or occupier within the meaning of those provisions.

Supply by bulk-licensees.

IX. (1) Where, and in so far as, the licensee (hereinafter in this clause referred to as "the bulk-licensee") is authorized by his license to supply energy to other licensees for distribution by them (hereinafter in this clause referred to as "distributing-licensees"), the following provisions shall apply, namely:—

Special provisions
applying to supply
by bulk-licensees.

- (a) any distributing-licensees within the bulk-licensee's area of supply may make a requisition on the bulk-licensee, requiring him to give a supply of energy and specifying the point, and the maximum rate per unit of time, at which such supply is required, and the date upon which the supply is to commence, such date being fixed after the date of receipt of the requisition so as to allow an interval that is reasonable with regard to the locality and to the length of the electric supply-line and the amount of the plant required;
- (b) such distributing-licensee shall, if required by the bulk-licensee so to do, enter into a written agreement to receive and pay for a supply of energy for a period of not less than seven years of such an amount that the payment to be made for the same at the rate of charge for the time being charged for such supply shall not be less than such an amount as will produce a reasonable return to the bulk-licensee on the outlay (excluding expenditure on generating plant then existing and any electric supply-line then laid down or placed) incurred by him in making provision for such supply;
- (c) the maximum rate per unit of time at which a distributing-licensee shall be entitled to be supplied with energy shall not exceed what is necessary for the purposes for which the supply is required by him, and need not be increased except upon a fresh requisition made in accordance with the foregoing provisions;
- (d) if any difference or dispute arises under this clause, it shall be determined by arbitration, and, in the event of such arbitration, the arbitrator shall have regard to the following amongst other considerations, namely:—
 - (i) the period for which the distributing-licensee is prepared to bind himself to take energy;
 - (ii) the amount of energy required and the hours during which the bulk-licensee is to supply it;
 - (iii) the capital expenditure incurred or to be incurred by the bulk-licensee in connection with the aforesaid supply of energy; and
 - (iv) the extent to which the capital expended or to be expended by the bulk-licensee in connection with such supply may become unproductive upon the discontinuance thereof.

(2) Notwithstanding anything in sub-clause (1), the bulk-licensee shall give a supply of energy to any distributing-licensee within his area of supply applying therefor, even although the distributing-licensee desires to be supplied with only a portion of the energy required for distribution by him :

Provided that the distributing-licensee shall, if so required by the bulk-licensee, enter into an agreement to take such energy upon special terms (including a minimum annual sum to be paid to the bulk-licensee) to be determined, if necessary, by arbitration in the manner laid down in sub-clause (1) (d).

(3) The maximum price fixed by a license for energy supplied to a distributing-licensee shall not apply to any partial supply given under sub-clause (2).

(4) Every distributing-licensee, who is supplied with energy by a bulk-licensee and intends to discontinue to receive such supply, shall give not less than twelve months' notice in writing of such intention to the bulk-licensee :

Provided that, where the distributing-licensee has entered into a written agreement with the bulk-licensee to receive and pay for a supply of energy for a certain period, such notice shall be given so as not to expire before the end of that period.

Charges.

Methods of charging. X. In the absence of an agreement to the contrary, the licensee may charge for energy supplied by him to any consumer—

- (a) by the actual amount of energy so supplied ; or
- (b) by the electrical quantity contained in the supply ; or
- (c) by such other method as may be approved by the Local Government :

Provided, first, that, where the licensee charges by any method so approved by the Local Government, any consumer who objects to that method may, by not less than one month's notice in writing, require the licensee to charge him, at the licensee's option, either by the actual amount of energy supplied to him or by the electrical quantity contained in the supply, and thereafter the licensee shall not, except with the consent of the consumer, charge him by another method :

Provided, secondly, that, before commencing to supply energy through any distributing main, the licensee shall give notice, by public advertisement, of the method by which he proposes to charge for energy so supplied ; and, where the licensee has given such notice, he shall not be entitled to change that method of charging without giving not less than one month's notice in writing of such change to the Local Government, to the local authority (if any) concerned, and to every consumer of energy who is supplied by him from such distributing main :

Provided, thirdly, that, if the consumer is provided with a meter in pursuance of the provisions of section 26, sub-section (1), of the Indian Electricity Act, 1910, and the licensee changes the method of charging for the energy supplied by him from the distributing main, the licensee

shall bear the expense of providing a new meter, or such other apparatus as may be necessary by reason of the new method of charging.

XI. Save as provided by clause IX, sub-clause (3), the prices charged by the licensee for energy supplied by him shall not exceed the maxima fixed by his license, or, in the case of a method of charge approved by the Local Government, such maxima as the Local Government shall fix on approving the method :

Provided, that, if, at any time after the expiration of seven years from the commencement of the license, the Local Government considers or is satisfied that the maxima so fixed or approved as aforesaid should be altered, it may, after such inquiry (if any) as it thinks fit, make an order accordingly, which shall have effect from such date as may be mentioned therein :

Provided, also, that, where an order in pursuance of the foregoing proviso has been made, no further order altering the maxima fixed thereby shall be made until the expiration of another period of five years.

XII. The price to be charged by the licensee and to be paid to him for energy supplied for the public lamps, and the mode in which those charges are to be ascertained, shall be settled by agreement between the licensee and the Local Government or the local authority, as the case may be, and, where any difference or dispute arises, the matter shall be determined by arbitration.

Testing and inspection.

XIII. The licensee shall establish at his own cost and keep in proper condition such number of testing stations, situated at such places within reasonable distance from any distributing main, as the Local Government may direct for the purpose of testing the pressure or periodicity of the supply of energy in the distributing main, and shall supply and keep in proper condition thereat, and on all premises from which he supplies energy, such instruments for testing as an Electric Inspector may approve, and shall supply energy to each testing station for the purpose of testing.

XIV. The licensee shall afford all facilities for inspection and testing of his works and for the reading, testing and inspection of his instruments, and may, on each occasion of the testing of his works or the reading, testing or inspection of any instruments, be represented by an agent, who may be present, but shall not interfere with the reading, testing or inspection.

XV. On the occasion of the testing of any works of the licensee by an Electric Inspector reasonable notice thereof shall be given to the licensee ; and the testing shall be carried out at such suitable hours as, in the opinion of the Electric Inspector, will least interfere with the supply of energy by the licensee, and in such manner as the Electric Inspector may think fit ; but, except under the provisions of an order made in each case in that behalf by the Local Government, the Electric Inspector shall not be entitled to have access

to, or interfere with, the works of the licensee at any points other than those at which the licensee himself has access to the same :

Provided that the licensee shall not be held responsible for any interruption or irregularity in the supply of energy which may be occasioned by, or required by the Electric Inspector for the purpose of, any such testing as aforesaid :

Provided, also, that the testing shall not be made in regard to any particular portion of the works oftener than once in any three months, unless in pursuance of an order made in each case in that behalf by the Local Government.

Plans.

XVI. (1) The licensee shall, after commencing to supply energy, forthwith cause a plan to be made of the area of supply, and shall cause to be marked thereon the alignment and the approximate height above or depth below the surface of all his then existing electric supply-lines, street-distributing boxes and other works, and shall once in every year cause that plan to be duly corrected so as to show the electric supply-lines, street-distributing boxes and other works for the time being in position. The licensee shall also, if so required by an Electric Inspector, cause to be made sections showing the approximate level of all his existing underground works other than service-lines.

(2) Every such plan shall be drawn to a scale which shall not be smaller than sixteen inches to the mile.

(3) Every such section shall be drawn to a horizontal scale which shall not be smaller than sixteen inches to the mile and to a vertical scale which shall not be smaller than one inch to eight feet.

(4) Every plan and section so made or corrected, or a copy thereof, marked with the date when it was so made or corrected, shall be kept by the licensee at his principal office or place of business within the area of supply, and shall at all reasonable times be open to the inspection of all applicants, and copies thereof shall be supplied on such terms and conditions as may be prescribed by rules under the Indian Electricity Act, 1910.

(5) The licensee shall, if required by an Electric Inspector and, where the licensee is not a local authority, by the local authority (if any) concerned, supply free of charge to such Electric Inspector or local authority a copy of every such plan or section duly corrected so as to agree with the original kept at the principal office or place of business of the licensee.

Additional notice of certain works.

XVII. On the day next preceding the commencement of any such works as are referred to in section 13 of the Indian Electricity Act, 1910, the licensee shall, in addition to any other notices which he may be required to give, serve upon the Electric Inspector, or such officer as the Local Government may appoint in this behalf for the area of supply, a notice in writing stating that he is about to commence the works, and the nature and position of the same.

§. 4 ACT VI OF 1879 (ELEPHANTS' PRESERVATION). Elephants'

THE ELEPHANTS' PRESERVATION ACT, 1879.

(ACT VI OF 1879.)

[Passed on the 22nd March, 1879.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1879	VI	Elephants' Preservation ...	Am. in pt., Act II of 1883. " " Act XIII of 1898.

An Act for the preservation of wild elephants.

Preamble. WHEREAS it is expedient to provide for the preservation of wild elephants ; It is hereby enacted as follows :—

Short title. 1. This Act may be called the Elephants' Preservation Act, 1879.

It extends to the territories now respectively administered by the

Local extent. Lieutenant-Governor of the North-Western Provinces and the Chief Commissioners of Oudb, the Central Provinces, [1] Lower Burma and Coorg ;

and the Local Government may, with the previous sanction of the Governor General in Council, extend it to any other local area by notification in the local official Gazette.

Commencement. So far as regards the power to make declarations and rules, it shall come into force on the passing thereof. In other respects it shall come into force on the first day of April, 1879.

Repeal. 2. The words " kills or catches elephants," in section 25, clause (i), of the Indian Forest Act, 1878, and the words " killing VII of 1878. or catching elephants," in section 31, clause (j), of the same Act, shall be repealed in every local area to which this Act extends or is extended.

Killing and capture of wild elephants prohibited. 3. No person shall kill, injure or capture, or attempt to kill, injure or capture, any wild elephant unless—

- (a) in defence of himself or some other person ;
- (b) when such elephant is found injuring houses or cultivation, or upon, or in the immediate vicinity of, any main public road or any railway or canal ; or
- (c) as permitted by a license granted under this Act.

Rights of Government with respect to certain elephants and tusks. [2] 4. Every wild elephant captured, and the tusks of every wild elephant killed, by any person not licensed under this Act, shall be the property of Government.

Leg. Changes :—[1] Substituted by Act XIII of 1898. [2] Substituted by Act II of 1883.

5. The Collector or Deputy Commissioner of any district may, subject to such rules as may for the time being be in force under this Act, grant licenses to kill, or to capture, or to kill and capture, wild elephants in such district:

License to kill and capture wild elephants.

Provided that no such license shall authorize any person to enter upon any land without the consent of the owner or occupier thereof.

Power of Local Government to declare what are main roads and canals, and to make rules as to licenses.

6. The Local Government may from time to time, subject to the control of the Governor General in Council,

declare what shall be deemed to be main public roads and canals within the meaning of this Act, and

make rules consistent with this Act for regulating—

- (a) the grant and renewal of licenses under this Act ;
- (b) the fees (if any) in money, tusks or captured elephants to be charged on such grant and renewal ;
- (c) the time during which such licenses shall continue in force ; and
- (d) the conditions (if any) on which they shall be granted.

All such declarations and rules shall be published in the local official Gazette and shall thereupon have the force of law.

7. Whoever, in contravention of section 3, kills, injures or captures, or attempts to kill, injure or capture, any wild elephant, shall be punished with fine which may extend to five hundred rupees for each elephant concerned ;

Penalty for contravening section 3.

and whoever breaks any condition contained in a license granted under this Act shall be punished with fine which may extend to five hundred rupees.

Any person convicted of a second offence under this section shall be punished with imprisonment which may extend to six months, or with fine, or with both.

When any person holding a license under this Act is convicted under this section, such license shall become void and shall be delivered up to the convicting Magistrate.

8. Any officer of Revenue or Police, or any Forest-officer, who may find any person killing, injuring or capturing, or attempting to kill, injure or capture, any wild elephant, except in the cases mentioned in section 3 clauses (a) and (b), may require him to produce and show a license granted to him under this Act.

License to be produced and shown on requisition of certain officers.

Any person who, on such request, wilfully refuses or is unable to produce and show such license as aforesaid, shall, in addition to any other punishment to which he may be liable under this Act, be punished with fine which may extend to one hundred rupees.

9. Every prosecution under this Act shall be commenced within six months from the commission of the offence in respect of which it is instituted.

Limitation of prosecution.

10. The amount or value of any fee payable under any license granted under this Act may be recovered from the licensee as if it were an arrear of land-revenue.

Recovery of fees.

THE INDIAN EMIGRATION ACT, 1908.

(ACT XVII OF 1908.)

[Passed on the 18th December, 1908.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1837	XXXII	Emigration	Rep., Act XIV of 1839.
1839	XIV	Do.	Rep., Act XIII of 1864.
1842	XV	Do.	Do.
1843	XXI	Do.	Do.
1844	XXI	Do.	Do.
1852	IV	Do.	Do.
1856	XIX	Do.	Do.
1864	XIII	Emigration of Native Labourers	Rep., Act VII of 1871.
1869	VI	Emigration	Do.
1871	VII	Indian Emigration	Rep., Act XXI of 1883.
1883	XXI	Do.	Rep., Act XVII of 1908.
1890	XVIII	Indian Emigration (1883) Amendment.	Do.
1891	XXII	Inland Emigration (extending Act I of 1882).	Rep., Act VII of 1893.
1897	VII	Indian Emigration Amendment	Rep., Act XVII of 1908.
1902	X	Do.	Do.
1904	XII	Do.	Do.
1908	XII	Do.	Do.
1908	XVII	Indian Emigration	Am. in pt., Act XIV of 1910. Rep. in pt. and Am., Acts IV and X of 1914.

An Act to consolidate the enactments relating to the Emigration of Natives of India.

WHEREAS it is expedient to consolidate the enactments relating to the emigration of Natives of India and their departure by sea out of India for certain purposes ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title and extent. 1. (1) This Act^(a) may be called the Indian Emigration Act, 1908 ; and

(2) It extends to the whole of British India.

Definitions. 2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(i) “ dependent ” means any of the following persons accompanying any emigrant, namely :—

(a) any woman who has not entered into an agreement to emigrate under this Act ;

(b) any child in whose name and on whose behalf any such agreement has not been entered into ; and

(c) any aged or incapacitated relative or friend :

Case-law :—(a) Scope of the Act, 14 A.L.J. 1222=17 Cr. L.J. 407=35 Ind. Cas. 967.

- (ii) "emigrant" means any Native of India who emigrates, or has emigrated, within the meaning of clause (iv), or who has been registered under this Act as an emigrant, and includes any dependent of an emigrant :
- (iii) "emigrant-vessel" means a vessel the master of which is licensed under this Act to carry emigrants therein :
- (iv) "emigrate" and "emigration" denote the departure by sea out of British India of a Native of India under an agreement to labour for hire in some country beyond the limits of India other than the island of Ceylon or the Straits Settlements :
- (v) "labour" means unskilled labour and does not include any work or other occupation of the nature hereinafter referred to in Chapter XI :
- (vi) "Magistrate" means, in the Presidency-towns, a Presidency Magistrate, and elsewhere a District Magistrate or a Sub-divisional Magistrate, and includes also any person appointed by the Local Government to perform in any area the functions of a Magistrate under this Act :
- (vii) "master" means any person (except a pilot or harbour-master) having for the time being control or charge of a vessel :
- (viii) "recruiter" includes a head recruiter or other person who collects or receives emigrants recruited by other persons :
- (ix) "Registering Officer" means any person appointed by the Local Government to perform in any area the functions of a Registering Officer under this Act : and
- (x) "vessel" includes anything made for the conveyance by water of human beings or property.

(2) In case of any doubt or dispute as to whether any person should be deemed—

- (a) to emigrate, or
- (b) to be a Native of India,

within the meaning of this Act, the question shall be determined by such person and in such manner as the Governor General in Council may, by rules made under this Act, direct, and such determination shall be final.

CHAPTER II.

PORTS FROM WHICH, AND COUNTRIES TO WHICH, EMIGRATION IS LAWFUL.

3. (1) Emigration shall not be lawful except from the ports of Calcutta, Madras, Bombay and Karachi, and from such other ports as the Governor General in Council, by notification in the Gazette of India, declares to be ports from which emigration is lawful.

(2) The Local Government may, by notification in the local official Gazette, fix for the purposes of this Act the limits of any port from which emigration is lawful.

4. (1) Emigration shall not be lawful except to the countries specified in the first schedule and to such other countries as the Governor General in Council, by notification in the Gazette of India, declares to be countries to which emigration is lawful.

(2) Every notification under this section must contain a declaration that the Governor General in Council has been duly certified that the Government of the country to which the notification refers has made such laws and other provisions as the Governor General in Council thinks sufficient for the protection of emigrants to that country during their residence therein.

[1] 5. Where the Governor General in Council has reason to believe that sufficient grounds exist for prohibiting emigration to any country to which emigration is lawful, he may, by notification in the Gazette of India, declare that emigration to that country shall cease to be lawful from a day specified in the notification; and from that day emigration to that country shall accordingly cease to be lawful.

6. (1) Where the Local Government has reason to believe that, in any country to which emigration is lawful, the plague or other epidemic disease dangerous to human life has broken out, and that emigrants, if allowed to emigrate to that country, would be exposed to serious risk of life on arrival there, it may, by notification in the local official Gazette, declare that emigration to that country from any port in the territories administered by it shall cease to be lawful pending a reference to the Governor General in Council.

(2) The Local Government shall at once report the publication of a notification under this section, with the reasons for it, to the Governor General in Council, who shall thereupon publish a notification in the Gazette of India confirming or cancelling the notification published by the Local Government.

7. Where the Governor General in Council is satisfied that the ground on which a notification has been published by him under either of the two last foregoing sections with respect to any country has ceased to exist, he may, by notification in the Gazette of India, declare that emigration to that country shall again be lawful from a day to be specified in the notification.

8. The Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, prohibit, from a day specified in the notification, all Natives of India or any specified class of such Natives from emigrating from the whole or any specified part of the territories under its administration to any specified country.

Leg. Changes :—[1] Substituted by Act XIV of 1910.

Saving for acts
done before publica-
tion of notification.

9. The publication of a notification under any of the four last foregoing sections shall not affect any act done, offence committed or proceedings commenced before the publication.

CHAPTER III.

EMIGRATION AGENTS.

10. (1) The Government of every country to which emigration is lawful may, from time to time, appoint a person to be Appointment of Emigration Agent in any port from which emigration is lawful.

(2) An appointment under this section shall not take effect until the Local Government, by notification in the local official Gazette, has declared its approval of the appointment.

11. The remuneration to be given to an Emigration Agent shall not depend on, or be regulated by, the number of emigrants Remuneration of Agents. sent by him, but shall be in the nature of a fixed salary:

Provided that the [1] Local Government [1] may authorize the payment to specified Emigration Agents of special fees for occasional work.

CHAPTER IV.

PROTECTOR OF EMIGRANTS AND MEDICAL INSPECTORS.

Appointment of
Protectors of Emi-
grants.

12. (1) The Local Government may appoint a proper person to be the Protector of Emigrants for any port within the territories administered by it from which emigration is lawful.

(2) The Governor General in Council may define the area to which the authority of any Protector of Emigrants so appointed shall extend.

(3) Every Protector of Emigrants shall be a public servant within XLV of 1860. the meaning of the Indian Penal Code.

13. Every Protector of Emigrants, in addition to the special duties General duties of assigned to him by this Act or the rules made under this Act, shall— Protector.

(a) protect and aid with his advice all emigrants ;

(b) cause, so far as he can, all the provisions of this Act and of the rules made under this Act to be complied with ;

(c) inspect, on arrival, all vessels bringing return emigrants to the port for which he is Protector ;

(d) enquire into the treatment received by the return emigrants both during the period of their service in the country to which they emigrated, and also during the return voyage, and report thereon to the Local Government : and

(e) aid and advise the return emigrants so far as he reasonably can.

Leg. Changes :—[1] Substituted by Act IV of 1914, for the words " Governor General in Council."

14. (1) The Local Government may appoint one or more Medical Inspectors of Emigrants at each port from which emigration is lawful and may apportion their respective duties.

(2) Every Medical Inspector of Emigrants shall be a public servant within the meaning of the Indian Penal Code.

XLV of 1860.

15. Every Emigration Agent and all persons in charge of, or employed in, any depot established under this Act, or in charge of, or employed in, any emigrant-vessel, shall give the Protector of Emigrants and the Medical Inspector of Emigrants every facility for making such inspections, examinations and surveys as are required by this Act or by the rules made under this Act, or as those officers may deem necessary or proper, and shall afford them all such information as they may reasonably require.

CHAPTER V.

RECRUITERS.

16. (1) The Protector of Emigrants at each of the ports from which emigration is lawful shall, on the application of the Emigration Agent for any country to which emigration is lawful, grant licenses to so many fit persons as to the Protector seems necessary to be recruiters of emigrants within the area to which the authority of the Protector extends.

(2) A person shall not, unless he holds a license granted under this Chapter,—

- (a) enter into, or attempt to enter into, any agreement with any person purporting to bind him to emigrate, or
- (b) in consideration of any hire or reward, induce or attempt to induce any person to leave any place for the purpose of emigrating, or
- (c) act or be employed in any other respect as a recruiter of emigrants.

(3) Every recruiter shall produce his license when called upon to do so by any Magistrate or officer, in charge of a police-station.

17. Every license granted under this Chapter shall specify the particular country for which, and the area within which, the holder is licensed to recruit, and may be in the form set forth in the second schedule.

18. (1) A license granted under this Chapter shall not be in force for a longer period than one year from the day on which it comes into force.

(2) The Protector of Emigrants may, on the ground of misconduct, cancel any license granted by him under this Chapter before the expiration of the period for which it is in force.

19. (1) A recruiter shall not, in any place beyond the limits of a port from which emigration is lawful, enter or attempt to enter into any agreement with any person purporting to bind him to emigrate, to induce or assist, or attempt to induce or assist, any person to leave any place for the purpose of emigrating, or act or be employed in any other respect as a recruiter of emigrants, unless his license bears the countersignature of the District Magistrate.

(2) If a District Magistrate has satisfied himself, after such enquiry as he thinks necessary, that the licensee is, by character or from any other cause, unfitted to be a recruiter under this Act, he may refuse to countersign a recruiter's license.

(3) If a District Magistrate has satisfied himself, after such enquiry as aforesaid, that sufficient and proper accommodation has not been provided in a suitable place, or is not available, for such intending emigrants or emigrants as may be collected by the recruiter pending their registration or removal to the depot at the port of embarkation, he may refuse to countersign a recruiter's license or to decide whether he will countersign his license until after the expiration of such time as may in his opinion be reasonable.

(4) Before a Magistrate refuses to countersign, or defers his countersignature of, a recruiter's license, he shall record in writing his reasons for so doing.

20. If any Magistrate, having countersigned a recruiter's license, afterwards finds reason to think that the licensee is, by character or from any other cause, unfitted to be a recruiter under this Act, or that the accommodation provided for intending emigrants or emigrants collected by him has become unsuitable or has ceased to be available, he may require the licensee to produce his license, and may cancel the countersignature on it, or may impound the license and send it for cancellation to the Protector of Emigrants who granted it.

Power for Magistrate to cancel countersignature in certain cases.

21. When a Magistrate countersigns, or refuses to countersign, a recruiter's license, or cancels the countersignature on it, he shall at once report the countersignature, or the refusal or cancellation, and the grounds of the refusal or cancellation, to the Protector of Emigrants who granted the license.

22. (1) The Emigration Agent on whose application any recruiter is licensed shall supply the recruiter with a written or printed statement, signed by the Agent, and countersigned by the Protector of Emigrants, of the terms of agreement which the recruiter is authorized to offer on behalf of the Agent to intending emigrants.

(2) The statement shall be both in English and in the vernacular language or languages of the local area within which the recruiter is licensed to recruit.

(3) The recruiter shall give a true copy of the statement to every person whom he invites to emigrate, and shall produce the statement for

the information of any Magistrate or officer in charge of a police-station, when called upon to do so by the Magistrate or officer.

Accommodation
to be provided by
recruiters.

23. (1) Every recruiter shall provide sufficient and proper accommodation in a suitable place for such intending emigrants or emigrants as may be collected by him pending their registration or removal to the port of embarkation.

(2) The place where the accommodation is provided shall have a board fixed in some conspicuous position specifying the purpose for which the place is used.

(3) Every District Magistrate, and any subordinate Magistrate, or officer of Police authorized in this behalf by a rule made under this Act, shall have, for the supervision and regulation of the places where accommodation is provided under this section, the same powers as are by this Act conferred on a Protector of Emigrants in respect of depôts at the port of embarkation.

(4) All recruiters or other persons in charge of these places shall afford every Magistrate and any officer of Police authorized as aforesaid in this behalf every facility for visiting and inspecting them.

CHAPTER VI.

REGISTRATION OF EMIGRANTS AND EXECUTION OF AGREEMENTS TO EMIGRATE.

Power for Local
Government to ap-
point Registering
Officers.

24. The Local Government may appoint any person to perform in a specified area, but subject to the control of the District Magistrate or such other officer as the Local Government appoints in this behalf, the functions of a Registering Officer under this Act.

Execution of
agreements.

25. Every agreement to emigrate entered into by any person must,—

(a) if executed within the limits of any port from which emigration is lawful, be executed in the presence of the Protector ;

(b) if executed elsewhere, be executed in the presence of a Registering Officer.

Appearance of
intending emigrants
before Registering
Officer.

26. Every recruiter who desires to engage any person to emigrate shall appear before a Registering Officer or the Protector of Emigrants (as the case may be) with that person, and with any persons intending to accompany that person as his dependents.

Examination and
Registration of
emigrant.

27. (1) The Registering Officer or Protector shall thereupon examine the person, apart from the recruiter, with reference to his intended agreement.

(2) If on such examination it appears,—

(a) that such person is competent and willing to enter into the agreement and understands its nature,

(b) that he has not been induced to enter into it by any coercion, undue influence, fraud, misrepresentation or mistake, and

- (c) that its terms are in conformity with law and are such as, according to the statement furnished to the recruiter under section 22, he was authorized to offer,

the Registering Officer or Protector shall, subject to the provisions of section 29, register in a book to be kept for the purpose, in such form as the Governor General in Council, by rules made under this Act, prescribes,—

- (i) the name, sex, name of the father, caste, occupation and age of the intending emigrant,
- (ii) the name of the village or place of which he is a resident, and
- (iii) such other particulars (if any) concerning him and his dependents (if any) as the Governor General in Council, by rules made under this Act, prescribes.

28. (1) Notwithstanding anything contained in the last foregoing section, the Registering Officer or Protector may refuse to register any married woman under that section if he finds that her husband does not consent to her emigrating.

Power to refuse registration in cases of married women.

(2) The Registering Officer or Protector may also, in the case of any woman whom he believes to be married, refuse to decide whether he will register her until after the expiration of such time, not exceeding ten days, as he thinks fit.

29. (1) When any person appears before a Registering Officer or Protector under section 26 as a dependent of an intending emigrant, the Registering Officer or Protector shall, if the person is able to give intelligent answers to questions, examine him, apart from the recruiter, as to his dependence on the intending emigrant whom he is about to accompany, and as to his willingness to emigrate.

Examination of dependent.

(2) Where the Registering Officer or Protector sees reason to doubt the existence of the dependence or willingness, he may, if he thinks fit, refuse to register the intending emigrant, unless the name of the dependent is omitted from the register.

30. Where the Registering Officer or Protector refuses to register any intending emigrant, he shall record his reasons for the refusal.

Record of reasons for refusal to register.

31. (1) Where the particulars concerning any intending emigrant and his dependents (if any) have been registered, the Registering Officer or Protector shall cause an agreement to be prepared in duplicate and shall call on the recruiter and the intending emigrant to execute the agreement in duplicate in his presence, and, if they execute it, shall attest the execution with his signature.

Execution and attestation of agreement.

(2) An agreement to emigrate shall not be of any effect until the particulars concerning the intending emigrant and his dependents (if any) have been registered, and the agreement has been executed and attested under this Act.

(3) When the particulars concerning any intending emigrant and his dependents (if any) have been registered and an agreement has been executed and attested under this Act, the intending emigrant shall be deemed to be registered under this Act as an emigrant.

(4) Any number of intending emigrants appearing with the same recruiter before the Registering Officer or Protector at the same time, and desiring to emigrate on the same terms to the same country, may, with the permission of the Registering Officer or Protector (as the case may be), execute one instrument of agreement under this section, instead of each of such intending emigrants executing a separate instrument.

32. Every agreement to emigrate shall contain a copy of the particulars registered concerning the intending emigrant and his dependents (if any) under section 27, and on the reverse such particulars concerning the nature, duration and term of service and the remuneration of the emigrant, and such other matters (if any) as the Governor General in Council, by rules made under this Act, prescribes.

Contents of agreement.
Record of registrations and agreements.

33. When the agreement has been executed and attested,—

- (a) one of the copies thereof shall be delivered to the emigrant, and the other shall be retained by the Protector or sent by the Registering Officer to him ; and
- (b) a certified copy of the particulars registered under section 27, concerning the emigrant or emigrants by whom the agreement was executed, and concerning his or their dependents (if any), shall be delivered to the recruiter for transmission to the Emigration Agent.

34. For the preparation of every agreement under this Chapter the recruiter or Emigration Agent shall pay such fee as the Governor General in Council, by notification in the Gazette of India, prescribes :

Fee for preparation of agreement.

Provided that the Governor General in Council may at any time, by like notification, declare that the fee payable under this section shall be consolidated, either generally or in any specified area, with the fee payable under section 68.

35. Notwithstanding anything to the contrary in the Indian Contract Act, 1972, it shall be lawful for any person of the age of sixteen years or upwards to enter in manner in this Act provided into an agreement to emigrate to any place to which emigration is lawful.

Power to make agreement if over sixteen.

36. Any person entering into an agreement to emigrate, and being the parent or guardian of a child under the age of sixteen years and above the age of ten years, may, in the name of and on behalf of the child, enter into an agreement in manner in this Act provided binding the child to emigrate with him.

Power to make agreement on behalf of child or ward.

CHAPTER VII.

EMIGRATION DEPOTS.

37. Every Emigration Agent shall establish at the port for which he is appointed a suitable depot for the reception and lodging of emigrants before embarkation for the country for which he is Emigration Agent, and shall provide all necessary food and clothing for all emigrants during their stay at the depot.

38. (1) A depot established under the last foregoing section shall not be used for the reception and lodging of emigrants until it has been inspected and approved by the Protector of Emigrants and the Medical Inspector of Emigrants, and a license for its use has been granted by the Protector.

(2) A license under this section shall not be granted for a longer period than one year from the day on which it comes into force.

(3) The Protector of Emigrants may at any time cancel a license under this section—

(a) if he considers that the depot for which it was granted is unhealthy, or has in any respect become unsuitable for the purpose for which it was established; or

(b) if the Emigration Agent fails, after reasonable notice, to comply with any of the requirements of this Act or of the rules made under this Act.

39. The Protector of Emigrants and the Medical Inspector shall from time to time, and at least once in every week during which any emigrants may be kept in any depot at the port for which they are Protector and Medical Inspector, respectively, inspect the emigrants in that depot and examine the state of the depot and the manner in which the emigrants therein are lodged, fed, clothed and otherwise provided for and attended to.

40. The Medical Inspector shall report to the Protector of Emigrants any circumstance that may come to his knowledge showing that any depot is not suitable for its purpose, or that the emigrants lodged therein are treated with any oppression or neglect.

41. (1) The Medical Inspector may, if he thinks fit, direct that any emigrant suffering from any disease likely to be dangerous to his neighbours shall be isolated or excluded from the depot.

(2) The Medical Inspector may, if he thinks fit, order the removal of any emigrant so suffering to a proper hospital for treatment at the expense of the Emigration Agent; and the expense (if any) incurred by the Protector of Emigrants in respect of the removal of the emigrant and his treatment in the hospital shall be recoverable from the Emigration Agent by the Protector of Emigrants, with interest thereon at the rate of six per centum per annum from the date on which the expense was incurred.

CHAPTER VIII.

CONVEYANCE OF EMIGRANTS TO DEPOTS AND PROCEDURE
ON ARRIVAL.

42. A recruiter shall not remove or attempt to remove any intending emigrant to a depot, or induce or attempt to induce him to go to a depot, or to leave the local limits of the jurisdiction of the Magistrate by whom the recruiter's license has been countersigned, or aid him in going to a depot, or in leaving any such local limits, until the intending emigrant has been registered under this Act as an emigrant.

43. (1) Every emigrant must, after he has been registered under this Act, be conveyed with all convenient despatch, by or under the orders of the recruiter or Emigration Agent, to the depot established at the port of embarkation by the Emigration Agent on whose application the recruiter has been licensed.

(2) When an emigrant has been registered at a place beyond the limits of the port of embarkation, he must, while proceeding to the depot, be accompanied throughout the journey either by the recruiter himself, or by a competent person appointed by him with the approval of a Magistrate.

(3) The Magistrate shall give to the person so appointed a certificate signed by him stating that he has been appointed for the journey to the depot.

(4) The recruiter or the person so appointed shall, throughout the journey, provide the emigrant with proper and sufficient food and lodging.

44. The arrival at a depot of each emigrant must immediately be reported by the person in charge of the depot to the Emigration Agent and by the Agent to the Protector of Emigrants.

45. (1) The copy of the particulars registered under section 27, received by the recruiter from the Registering Officer or Protector, must, as soon as conveniently may be after the arrival of the emigrant at the depot, be shown by the Emigration Agent to the Medical Inspector of Emigrants.

(2) The Medical Inspector shall examine each emigrant whose name is entered in the said copy to ascertain whether he is fit, having regard to his age and state of health, to undertake the journey to the country to which he has agreed to emigrate.

(3) The Medical Inspector, if satisfied of his fitness, shall give a certificate to that effect to the Emigration Agent. If not so satisfied, he shall give a certificate to that effect to the Protector of Emigrants.

Power for Protector to order payment of expenses of return of emigrant in certain cases.

46. (1) In any of the following cases, namely :—

(a) if the Medical Inspector of Emigrants finds that an emigrant is, or has become, unfit to undertake the journey to the

country to which he has agreed to emigrate, and if the Protector of Emigrants considers that the emigrant has not dishonestly represented himself as fit to undertake the journey, or

(b) if the Protector finds that any such irregularity has occurred in the recruitment or treatment by the recruiter of any emigrant as makes it just to rescind the agreement to emigrate, or

(c) if the Emigration Agent refuses to fulfil the agreement entered into with the emigrant,

the Protector may order the Emigration Agent to pay to the emigrant such sum as the Protector deems reasonable as compensation, and, when the emigrant has been registered at a place beyond the limits of the port of embarkation, such reasonable sum as is necessary to enable him to return to the place at which he was registered, and may take any steps which he thinks necessary for the conveyance of the emigrant to that place.

(2) Any emigrant who has been registered at any place beyond the limits of the port of embarkation, and who from his state of health is, in the opinion of the Medical Inspector of Emigrants, unfit to undertake at once the return journey to the place at which he was registered, shall be entitled to be fed, lodged, clothed and attended to at the depot at the expense of the Emigration Agent until he is reported by the Medical Inspector fit to undertake the return journey.

Payment of expenses of dependents and relatives.

47. (1) Where any order is made under the last foregoing section with reference to any emigrant who was registered at any place beyond the limits of the port of embarkation,—

(a) any emigrant who has been registered as his dependent, or

(b) any emigrant who, not being a dependent, is the father, mother, wife, husband, son, daughter, brother, sister, guardian or ward of the emigrant,

shall be entitled—

(i) to be conveyed at the expense of the Emigration Agent with the emigrant to the place at which he was registered, and

(ii) if the emigrant is unable to travel, to be lodged, fed and clothed in the depot at the expense of the Emigration Agent until the emigrant is able to travel.

(2) The Protector of Emigrants may include any expenses incurred under this section in an order made under the last foregoing section with respect to the emigrant.

48. If it appears that during the journey to the depot any emigrant has suffered any ill-treatment, or that, in the case of any emigrant who has been registered at a place beyond the limits of the port of embarkation, the provisions of section 43 have not been complied with, the Protector of Emigrants may order the Emigration Agent to pay—

Compensation to emigrant for ill-treatment on journey.

(a) to the emigrant a reasonable sum by way of compensation, and

- (b) to the Protector the expenses (if any) which may have been incurred by or under the orders of the Protector on behalf of the emigrant by reason of the neglect to comply with the provisions of section 43.

Power for Protector to pay and recover expenses incurred on behalf of emigrant.

49. (1) On failure of the Emigration Agent for twenty-four hours to comply with an order of the Protector for the payment of any sum to an emigrant under any of the last three foregoing sections, the Protector may pay the same to the emigrant.

(2) Every sum paid by the Protector to an emigrant under sub-section (1), and, on failure of the Emigration Agent for twenty-four hours to comply with an order for payment thereof under the last foregoing section, every sum which the Protector may have ordered the Emigration Agent to pay to him under that section, shall be recoverable from the Emigration Agent with interest thereon at the rate of six per centum per annum from the date of payment.

(3) Further proof shall not be required by any Court in any such case than that the Protector gave the Emigration Agent an order to pay the sum, and that the Emigration Agent for twenty-four hours failed to comply with the order.

CHAPTER IX.

EMIGRANT-VESSELS.

50. An emigrant shall not be received on board any vessel unless a license to carry emigrants in the vessel has been [1] granted in accordance with the provisions of this Act. [1]

51. (1) When the master or owner of any vessel desires to obtain a license to carry emigrants in his vessel, he shall apply in writing [2] to the Protector of Emigrants [2] for the license.

(2) The application must state the number of emigrants which, according to the rules as to space contained in this Chapter, the applicant deems the vessel capable of carrying, and the tonnage and such other particulars respecting the vessel as the Governor General in Council, by rules made under this Act, prescribes.

52. (1) The Protector of Emigrants shall cause the vessel to be surveyed by a competent person at the cost of the master or owner, with a view to ascertain her seaworthiness, and the extent and nature of her accommodation for emigrants, and to ascertain that she is properly ventilated, and is supplied with all the tackle, apparel and furniture requisite for her intended voyage:

Provided that, if the vessel is a steamship having a certificate of survey granted by the Board of Trade or any British Colonial Government or under the Indian Steamships Act, 1884, and in force and applicable to her intended voyage, the survey under this sub-section with a view to ascertain her seaworthiness shall not extend to her hull or machinery

Leg. Changes :—[1] These words were substituted for "obtained from the Local Government" by Act IV of 1914. [2] These words were substituted for "through the Protector of Emigrants to the Local Government" by Act IV of 1914."

unless the Protector of Emigrants has reason to believe that, since the grant of the certificate, her hull or machinery has sustained injury or damage or has otherwise become inefficient.

(2) If the [1] Protector of Emigrants [4] is of opinion that the vessel is in all respects suitable for the carrying of emigrants under this Act, and is properly manned and officered, he [2] shall give to the master of the vessel a license to carry emigrants therein specifying the number of emigrants which may be received on board.

Accommodation
required on board
emigrant-vessel.

53. (1) A license shall not be granted under the last foregoing section unless—

- (a) there is provided for the emigrants, either between decks or, subject to the approval of * * [3] the Medical Inspector, in cabins on the upper deck, a space devoted to the exclusive use of the emigrants having in every part a height of not less than six feet ;
- (b) a separate place is fitted up for a hospital ; and
- (c) such arrangements are made for the separation of women (married or single) and children from the other emigrants as the Governor General in Council, by rules made under this Act, prescribes.

(2) The cabins on the upper deck provided under clause (a) of this section must be firmly secured and entirely covered in.

Rules as to space
on board emigrant-
vessel.

54. Every emigrant-vessel shall contain within the space referred to in clause (a) of the last foregoing section at least twelve superficial feet and seventy-two cubic feet of space for each emigrant :

Provided that two emigrants under the age of ten years shall for the purposes of this section count as one only.

55. There shall be on board every emigrant-vessel at the time of departure of the vessel from the port at which they embark, provisions, clothing, fuel and water for the emigrants (over and above the supply for the master, officers and crew, and of the cabin and other passengers, if any), in such quantity and of such description and quality as the Governor General in Council, by rules made under this Act, prescribes.

56. Every emigrant-vessel shall, at the time of departure of the vessel from the port at which the emigrants embark, have on board, and shall carry with her, a properly qualified surgeon, and also such compounders, interpreters and attendants subordinate to the surgeon, and such medicines and other stores, in such quantity and of such quality as the Governor General in Council, by rules made under this Act, prescribes.

Duty of Protector
and Medical Ins-
pector with respect
to enforcement of
foregoing sections.

57. The Protector of Emigrants and the Medical Inspector of Emigrants shall see personally that all the provisions of the last two foregoing sections are complied with.

Leg. Changes:—[1] These words were substituted for "Local Government" by Act IV of 1914. [2] Substituted for "it" by Act IV of 1914. [3] The words "the Protector of Emigrants and" were omitted by Act IV of 1914.

58. (1) Every master licensed under this Act shall, on the requisition of the Protector of Emigrants, and before any emigrant embarks on board his vessel, execute to the Protector in duplicate, a bond, in such form as the Local Government prescribes, binding himself and the owner of the vessel in a penal sum of ten thousand rupees, to perform the duties imposed by this Act or any rule made under this Act on a master and owner, respectively.

(2) The Protector of Emigrants shall forward one copy of the bond to such officer as may be appointed in this behalf by the Government of the country to which the emigrants are to be conveyed, or, in the case of a foreign colony, to the British Consular Agent, and the other copy to the Local Government.

CHAPTER X.

EMBARKATION AND DEPARTURE.

59. An emigrant shall not embark, except with the permission of the Protector of Emigrants, until seven days have elapsed from the date of his arrival at the depot.

60. An emigrant-vessel shall not sail from any port in British India—

- (a) to any country west of the Cape of Good Hope, except at such seasons as the Governor General in Council, by rules made under this Act, prescribes as seasons during which it shall be lawful for emigrant-vessels generally, or of a class to which the vessel belongs, to sail to that country ;
- (b) to any country during any season which the Governor General in Council, by notification in the Gazette of India, declares to be a season during which the sailing of emigrant-vessels to that country is prohibited.

61. If any emigrant without sufficient cause refuses or neglects to embark when called on by the Emigration Agent to do so, it shall not be lawful to compel the emigrant to embark :

Provided that nothing in this section shall affect the civil or criminal liabilities which an emigrant incurs by reason or in respect of any such refusal or neglect.

62. (1) When any emigrants are about to embark on board any vessel, the Emigration Agent shall supply the master of the vessel with four copies of a list, specifying, as accurately as may be, the names, ages and occupations of the emigrants, and the names of their respective fathers.

(2) The master shall not receive any emigrant on board unless he is provided with a pass, signed by the Emigration Agent, and countersigned by the Protector, stating the name and age of the emigrant, the name of his father, and the country to which he has agreed to emigrate, and

certifying that he is in a fit state of health to undertake the voyage to that country.

(3) Every emigrant shall on embarkation deliver the pass to the master.

(4) The master shall compare the emigrants who embark and the passes delivered by them with the list supplied by the Emigration Agent, and, if the list appears to be correct and to correspond with the passes delivered and with the emigrants embarked, the master shall sign the four copies of the list.

(5) The master shall not permit any emigrant to remain on board who has not delivered up his pass to the master or is not mentioned in the list.

63. (1) When the copies of the list have been signed, the master shall give two of the copies to the Protector of Emigrants, who shall sign them if he believes them to be correct.

(2) The Protector shall send one of the copies so signed by him by the vessel which carries the emigrants to such officer as may be appointed in this behalf by the Government of the country to which the emigrants have agreed to emigrate, or, in the case of a foreign colony, to the British Consular Agent, and shall file the other copy in his own office.

Disposal of the two copies of list to be given by master to Protector.

64. (1) The master shall give to the Emigration Agent the two remaining copies of the list.

(2) The Emigration Agent shall thereupon sign the copies, and shall return one of them to the master.

(3) The master shall, on the arrival of the vessel at the country to which the emigrants have agreed to emigrate and before their disembarkation, deliver the copy so returned to him to such officer as may be appointed in this behalf by the Government of the country, or, in the case of a foreign colony, to the British Consular Agent.

65. (1) The Medical Inspector shall be present at the embarkation of all emigrants, and shall examine each emigrant to ascertain if he is in a fit state of health to undertake the voyage to the country to which he has agreed to emigrate; and, if he finds that he is not fit to undertake the voyage, he shall inform the Protector accordingly.

Examination of emigrants by Medical Inspector.

(2) The Protector may thereupon refuse to permit the emigrant to embark; and any emigrant, registered as a dependent of an emigrant whom the Protector has refused to permit to embark, or any emigrant who, not being a dependent, is the father, mother, wife, husband, son, daughter, brother, sister, guardian or ward of the emigrant, may, notwithstanding anything in this Act, refuse to embark.

(3) The provisions of sections 46, 47 and 49 shall apply to emigrants who under this section are not permitted to embark, and to any emigrants who under this section refuse to embark, and to the recovery of expenses incurred under this Act in respect of them.

66. Before any emigrant-vessel clears out of any port, the master of the vessel shall obtain from the Protector of Emigrants at the port and from the Emigration Agent for the country to which the emigrants are to be conveyed, certificates signed by the Protector and Emigration Agent, respectively, to the effect that the Protector and Agent have, in respect of all the emigrants embarking at that port in the vessel, done all that is required by the foregoing provisions of this Act, or by the rules made under this Act, to be done on the part of the Protector and Agent, respectively, and that all the directions for the security, well-being and protection of emigrants which are contained in this Act or in the rules made under this Act have, in the case of that vessel, been complied with.

67. The master of every emigrant-vessel shall keep on board the vessel during the whole voyage two copies of this Act, and of all rules made under this Act, and two copies of a translation of this Act, and of those rules, in such language or languages as the Local Government directs, and shall, on request made at any reasonable time, produce one of those copies to any emigrant for his perusal.

68. For each emigrant who embarks on board an emigrant-vessel the Emigration Agent shall pay to the Protector of Emigrants a fee of such amount as the Governor General in Council, by notification in the Gazette of India, prescribes :

Provided as follows :—

- (a) the fee payable under this section shall not be more than is, in the opinion of the Governor General in Council, sufficient to raise the total income from fees under this Act to an amount which will cover the cost of any establishment or supervision which the Governor General in Council thinks necessary to provide for the control of emigration ;
- (b) if it appears to the Governor General in Council expedient to provide, in the case of any country, any special establishment or expenditure for the protection of Indian emigrants to that country, the Governor General in Council may increase the fee payable in the case of emigrants to that country to an amount sufficient, in his opinion, to cover the cost of the special establishment or expenditure.

69. Every master licensed under this Act shall see that all the provisions of this Act and the rules made under this Act are observed on board his vessel during the voyage from British India to the country to which the emigrants are to be conveyed.

70. The master shall return his pass to each emigrant before he disembarks in the country to which he has agreed to emigrate.

Special Provisions as to Vessels sailing from Calcutta.

Emigrant - vessel sailing from Calcutta to depart within twenty-four hours of embarkation.

71. The master of every vessel carrying emigrants from the port of Calcutta shall proceed on his voyage and depart with his vessel from Garden Reach within twenty-four hours after the embarkation of such of the emigrants as have first embarked.

Emigrant - vessel sailing from Calcutta to be towed to sea.

72. Every sailing-vessel leaving the port of Calcutta with emigrants shall proceed from Garden Reach to sea under tow of a steamer declared to be competent by such officer as the Local Government appoints in this behalf.

73. (1) Where an emigrant-vessel leaves the port of Calcutta, if during her passage down the river, and while between Garden Reach and Diamond Harbour, the disease of measles, scarlet-fever or small-pox appears on board the master shall, if so required by the surgeon in charge of the emigrants, send to the hospital at Diamond Harbour all emigrants suffering from the disease, with any emigrants registered as their dependents and any emigrant who, not being a dependent, is the father, mother, wife, husband, son, daughter, brother, sister, guardian or ward of any such emigrant and who wishes to accompany him or her, and shall at once inform the Protector of Emigrants at Calcutta of the number and names of the emigrants so sent to hospital.

(2) The provisions of sections 46, 47 and 49 shall, so far as may be, apply to emigrants landed under this section, and to the recovery of expenses incurred in respect of them.

Power of surgeon of emigrant-vessel leaving Calcutta to require all emigrants to be landed when cholera appears.

74. (1) In the event of cholera in an epidemic form appearing among the emigrants on board any such vessel carrying emigrants from the port of Calcutta, the surgeon in charge of the emigrants may require the master to land all the emigrants on board the vessel at Diamond Harbour.

(2) The master shall at once comply with the request of the surgeon, and shall immediately give notice of his having done so to the Protector of Emigrants at Calcutta, who shall take such action thereon as the Governor General in Council, by rules made under this Act, prescribes.

CHAPTER XI.

DEPARTURE OF NATIVES OF INDIA BY SEA OUT OF INDIA FOR CERTAIN PURPOSES.

Application for permission to engage Natives of India to depart abroad for certain purposes.

75. (1) Whoever desires to engage any Native of India to depart by sea out of India for the purpose—

- (a) of working as an artisan, or
- (b) of any exhibition or entertainment, or
- (c) of service in any restaurant, tea-house or other place of public resort, or

(d) save as provided in sub-section (2), of domestic service, in any place beyond the limits of India other than the island of Ceylon or the Straits Settlements, shall apply for the permission of the Local Government having jurisdiction at the port from which such person is to depart, and shall state in his application—

- (i) the number of the persons whom he proposes so to engage ;
- (ii) the place or places beyond the limits of India to which such persons and their dependents are to proceed ;
- (iii) the accommodation to be provided for such persons and their dependents until their departure out of India and during the voyage ;
- (iv) the provision to be made for the health and well-being of such persons and their dependents during the period of the proposed engagement, and for their repatriation at the end of such period ;
- (v) the terms of the agreements under which such persons are to be engaged ; and
- (vi) the security in British India which he proposes to furnish for the due observance of such agreements and for the proper treatment of the persons to be engaged and their dependents.

(2) Nothing in sub-section (1) shall be deemed to apply to any person who in good faith—

- (a) engages a Native of India to accompany him out of India as his personal domestic servant, or
- (b) engages in compliance with the request of some other person, not being in India, a Native of India to depart out of India, for the purpose of becoming the personal domestic servant of such other person.

Explanation.—For the purposes of this Chapter—

- (i) the word " port " shall mean a port from which emigration is lawful or any port which the Governor General in Council, by notification in the Gazette of India, notifies in this behalf ; and
- (ii) the words " emigrant " and " emigrate " in the definition of " dependent " in section 2, sub-section (1), clause (i) shall be read as referring to the departure by sea out of India of a person whom it is desired to engage under this Chapter.

76. On receiving an application under section 75 the Local Government may, after such enquiry as may be necessary, grant the permission applied for on such terms and conditions (if any) and on payment of such fees (if any) as it thinks fit, or withhold such permission, and the decision of the Local Government shall be final.

77. (1) Before any Native of India departs from India in accordance with permission granted under section 76, the person by whom he has been engaged shall appear before the Protector of Emigrants at the port of embarkation with such Native of India and with any persons intending to accompany him as his dependents.

Applications how
to be disposed of.

Appearance of en-
gaged persons be-
fore, and registration
of names by, Protec-
tor of Emigrants.

(2) If it appears to the Protector of Emigrants—

- (a) that permission to engage such Native of India has been duly obtained,
- (b) that the terms of the agreement under which such Native of India has been engaged are in accordance with the terms of the permission granted, and
- (c) that the conditions on which such permission was granted have been complied with,

he shall register in a book to be kept for the purpose such particulars concerning such Native of India and his dependents (if any) and concerning the person engaging him in such form as the Governor General in Council, by rules made under this Act, prescribes.

78. Where such security as is referred to in section 75, sub-section (1), sub-clause (vi), has been furnished, the Local Government may, after such inquiry as may be necessary, pass orders in regard to the forfeiture of the security and the application of the same or of any part thereof, or may order the return of the security or of any part thereof to the person by whom it was furnished, or to his representative.

Provisions as to security.
Delegation to Protector of Emigrants of authority to receive or dispose of applications.

79. The Local Government may, by notification in the local official Gazette, authorize a Protector of Emigrants to receive or dispose of applications made under this Chapter :

Provided that an appeal shall lie to the Local Government from every order passed by a Protector of Emigrants in exercise of the authority so conferred.

Application of Chapter to ports from which emigration is not lawful.

80. For the purposes of the application of this Chapter at any port notified under clause (i) of the explanation to section 75—

- (a) such port shall be deemed to be a port from which emigration is lawful, and
- (b) such officer as the Local Government may appoint in this behalf shall be deemed to be the Protector of Emigrants.

CHAPTER XII.

RULES.

Power for Governor General in Council to make rules.

81. (1) The Governor General in Council may, by notification in the Gazette of India, make rules consistent with this Act—

- (a) to prescribe the person by whom any doubt or dispute referred to in sub-section (2) of section 2 shall be determined and the procedure to be followed and the proof to be required in such cases ;
- (b) to provide for the supervision and regulation of places of accommodation provided under this Act, and to define the classes of Magistrates and the officers of Police to be authorized to visit and inspect those places ;
- (c) to prescribe the form of the register required under this Act, and the particulars to be entered therein, and to regulate the control to be exercised over Registering Officers by the District

Magistrate or officer (if any) appointed in this behalf under this Act ;

- (d) to prescribe the forms of the agreements to be made under this Act, and the particulars to be contained therein, and the language or languages in which agreements must be expressed ;
- (e) to prescribe the conditions on which licenses for the establishment of depôts under this Act may be given, to provide for the supervision and regulation of depôts, and for the medical care of the emigrants during their residence there, and the measures to be taken on the outbreak of any epidemic or infectious disease there ;
- (f) to prescribe the forms to be supplied by Emigration Agents and recruiters for the purposes of this Act ;
- (g) to prescribe the particulars which the owner or master of a vessel applying for a license to carry emigrants in his vessel must state ;
- (h) to regulate the proportion of women to be ordinarily carried in any emigrant-vessel with male emigrants, and to prescribe the arrangements to be made for the separation of women (married or single) and children from the other emigrants on board an emigrant-vessel ;
- (i) to prescribe the description, quantity and quality of provisions, fuel and water to be taken by emigrant-vessels, the daily allowance of food and water to be issued, and the nature and amount of clothing to be supplied to each emigrant during the voyage ;
- (j) to fix the number of the compounders, interpreters and attendants subordinate to the surgeon to be carried for the care of the sick or weakly on board each emigrant-vessel ;
- (k) to prescribe the nature, quantity and quality of medicines and other stores to be carried on board emigrant-vessels ;
- (l) to provide for the ventilation and cleanliness of every emigrant-vessel during a voyage, and for its being furnished with a sufficient number of life-buoys, boats, water-buckets and other appliances to be used in case of shipwreck or fire ;
- (m) to prescribe the seasons at which alone emigrant-vessels or specified classes of emigrant-vessels may sail from any port in British India to any country west of the Cape of Good Hope to which emigration is for the time being lawful ;
- (n) to provide for the disposal of emigrants who may be landed under section 74 ;
- (o) to provide for the medical care of the emigrants on the voyage, and to provide for the measures to be taken on the outbreak of any epidemic or infectious disease on a voyage ;
- (p) to provide for a journal being kept by the surgeon of every emigrant-vessel, recording the health of the emigrants, and his treatment of the sick, with full explanation of the causes of every death ; and to define the duties and powers of the surgeon in respect of the emigrants committed to his care ;

- (q) to define and regulate the powers and duties of the several officers appointed by the Government under this Act;
- (r) generally to provide for the security, well-being and protection of emigrants; and
- (s) to carry into effect the provisions of Chapter XI:

Provided that the Local Government may, in special cases, notwithstanding anything contained in rules made under clause (h) of this section, permit an emigrant-vessel to sail, though it does not carry the proportion of women required to be carried in ordinary cases.

(2) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

CHAPTER XIII.

OFFENCES.

Unlawful
recruiting.

82. (1) Whoever, except in conformity with the provisions of this Act or of the rules made under this Act,—

- (a) makes, or attempts to make, any agreement with any Native of India, purporting to bind him to emigrate, or,
- (b) in consideration of any hire or reward, induces, or attempts to induce, any Native of India to leave any place for the purpose of emigrating, or otherwise acts or is employed as a recruiter of emigrants, or
- (c) in consideration of any hire or reward, receives into or detains in any place, or, being a recruiter, in any place other than a place in which accommodation has been provided in accordance with this Act or the rules made under this Act, any person with a view to his being registered as an emigrant, or after his registration as an emigrant and before his departure for the dépôt at the port of embarkation,

shall be punishable with fine which may extend to five hundred rupees.

(2) If any person, other than a recruiter licensed under this Act, commits an offence under this section, any police-officer may arrest him without warrant.

Recruiters removing
unregistered
emigrants to depot.

83. Whoever, being a recruiter licensed under this Act,—

- (a) before any intending emigrant has been registered under this Act as an emigrant,—
 - (i) removes or attempts to remove him to a dépôt, or
 - (ii) induces, or attempts to induce, him to leave the local limits of the jurisdiction of the Magistrate by whom the recruiter's license has been countersigned, or
 - (iii) aids, or attempts to aid, him in leaving any such local limits or going to any depot, or
- (b) fails to give a true copy of the statement with which he is provided under section 22 to any person whom he invites to emigrate, or

(c) fails to provide any emigrant whom he has engaged, and who has been registered at a place beyond the limits of the port of embarkation, with suitable lodging and food, or otherwise ill-treats any emigrant on his journey to the depôt, shall be punishable with fine which may extend to five hundred rupees.

84. Whoever, by means of intoxication, coercion or fraud, causes or induces, or attempts to cause or induce, any Native of India to emigrate, or to enter into any agreement to emigrate, or to leave any place with a view to emigrating, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Fraudulently inducing Native to emigrate.
False representation of Government authority.

85. Whoever,—

(a) without lawful authority, issues any written order to the Police to assist himself or any other person to procure emigrants, or
(b) falsely represents that any emigrants are required by the Government or are to be engaged on behalf of the Government, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Receiving emigrants on board vessel in contravention of Act.

86. Any master of a vessel who—

(a) knowingly receives on board his vessel any emigrant who has not complied with the provisions of this Act or the rules made under this Act, so far as they are binding on him, or,
(b) not being licensed under this Act, knowingly receives any emigrant on board his vessel, or,
(c) being licensed under this Act, knowingly receives on board his vessel any emigrant in excess of the number specified in his license, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees for each emigrant so received, or with both; and the vessel, her tackle, apparel and furniture, may be declared by the Court before which the master is tried to be forfeited to His Majesty.

87. Any master licensed under this Act who fraudulently does, or suffers to be done, any act or thing whereby the license becomes inapplicable to the altered state of the vessel or other matter to which the license relates, shall be punishable with fine which may extend to five thousand rupees, and he may also be sued on any bond which he may have executed under section 58.

88. Any master of an emigrant-vessel who clears, or attempts to clear, his vessel outwards when any of the provisions of section 53, 55 or 56 have not been complied with in respect of his vessel, shall be punishable with fine which may extend to four thousand rupees.

Clearance without compliance with Act.

Failure of master to comply with provisions as to lists and passes.

received on board.

89. Any master who receives on board his vessel any emigrants and fails to comply with the requirements of sections 62, 63 and 64 in respect of those emigrants, shall be punishable with fine which may extend to two hundred rupees for each emigrant so

Master taking on board, after clearance, emigrants not entered in list.

90. Any master who, having cleared his vessel, takes on board any emigrant not entered in the list mentioned in section 62 or not furnished with a pass required by that section, shall be punishable with fine which may extend to two hundred rupees for each emigrant so taken.

Master landing emigrant at other than specified country.

91. Any master who lands any emigrant in any country other than the country for which he has been shipped by the Emigration Agent, shall be punishable for every emigrant so landed with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to one month, or with both, unless the landing has been caused by stress of weather or unavoidable accident, or has taken place under the provisions of section 73 or 74.

Failure to comply with provisions as to leaving Calcutta.

92. Any master of a sailing-vessel leaving the port of Calcutta with emigrants on board who—

(a) does not leave Garden Reach with his vessel within the time prescribed in section 71, or,

(b) without reasonable excuse, causes or allows his vessel to go below Garden Reach without being in tow of such a steamer as is referred to in section 72,

shall be punishable with fine which may extend to one thousand rupees.

Emigrant deserting or refusing to proceed to depot.

93. (1) Any emigrant who—

(a) deserts before arrival at depôt, or

(b) refuses without reasonable cause to proceed to the depôt,

shall be punishable with fine which may extend to twenty rupees, or to the cost incurred in entering into an agreement with, registering and conveying him to the depot, whichever is greater, and, in default of payment of the fine, with imprisonment which may extend to one month.

(2) Any fine levied under this section may, in the discretion of the convicting Magistrate, be paid to the Emigration Agent or recruiter by whom the cost was incurred.

Emigrant deserting from depot or failing to embark.

94. (1) Any emigrant who—

(a) deserts from the depôt, or

(b) without reasonable cause, refuses or neglects to embark when called upon to do so by the Emigration Agent,

shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or to double the amount of the cost incurred in entering into an agreement with, registering and conveying him to the depôt, and maintaining him therein, or with both.

(2) Any fine levied under this section may, in the discretion of the convicting Magistrate, be paid to the Emigration Agent or recruiter by whom the cost was incurred.

Causing or permitting embarkation of emigrant in contravention of section 59.

95. Any person who causes, or any master who knowingly permits, any emigrant to embark contrary to the provisions of section 59, shall be punishable with fine which may extend to two hundred rupees for each emigrant so embarked.

Offences against provisions of Chapter XI.

96. Whoever, —

- (a) without having first obtained the permission of the Local Government referred to in section 75, sub-section (1), enters or attempts to enter into an agreement purporting to bind any Native of India to depart by sea out of India for any of the purposes specified in the said sub-section, or
- (b) causes any Native of India engaged by him for any such purpose as aforesaid to depart from any port which is not a port from which emigration is lawful, or which has not been notified under clause (i) of the explanation to section 75, or
- (c) causes any Native of India engaged by him, after grant of the permission referred to in section 76, to depart by sea out of India without registration of the particulars required by section 77, sub-section (2),

shall, on conviction by a Magistrate of the first class, be punishable with fine which may extend to two hundred and fifty rupees for each Native of India in respect of whom the offence is committed.

97. Prosecutions under sections 86 to 96 both inclusive shall not be instituted except as follows, namely : —

(a) prosecutions under sections 86 to 92, both inclusive, by the Emigration Agent, or by the Protector of Emigrants, or by an officer appointed for the purpose by the Local Government ;

(b) prosecutions under section 93, by or with the sanction of a Magistrate or Registering Officer or of the Protector of Emigrants at the port of embarkation ;

(c) prosecutions under section 94, by the Emigration Agent with the sanction of the Protector ;

(d) prosecutions under sections 95 and 96, by the Protector of Emigrants or by an officer appointed for the purpose by the Local Government.

Defence to charges of desertion.

98. The following shall be good defences to charges under sections 93 and 94, respectively, namely : —

(a) to a charge under section 93, that the accused person or other emigrants accompanying him has or have been ill-treated, deceived or defrauded by the recruiter or any person under his control ;

(b) to a charge under section 94, that the emigrant has suffered any ill-treatment or neglect in the depôt or on the journey thither.

99. All the powers for the time being conferred by law on officers of sea-customs with regard to the searching and detention of vessels or otherwise for the prevention of smuggling on board thereof, may be exercised by those officers for the prevention of offences against this Act.

Power for Customs-officers to search and detain for purposes of Act.

CHAPTER XIV. SUPPLEMENTAL.

100. The Local Government may appoint any person to perform within a specified area the functions of a Magistrate under this Act.

Power for Local Government to appoint Magistrate for purposes of Act.

101. (1) Where an Emigration Agent is chargeable with a breach of any duty to an emigrant arising from any agreement with the emigrant or imposed by this Act or the rules made under this Act, the Protector of Emigrants may, if he thinks fit, institute a suit on behalf of the emigrant against the Emigration Agent for the recovery of compensation for the breach.

Suits against Emigration Agent for breach of duty.

(2) In awarding compensation under this section all sums ordered to be paid under section 46 or section 48 shall be taken into consideration.

102. (1) The [1] Local Government [1] may, by notification in the [2] local official Gazette [2], determine what shall be held to be, for the purposes of this Act, the probable length of the voyages by sailing-vessels and vessels using steam power, respectively, from any port from which, to any country to which, emigration is for the time being lawful.

Power for Governor General in Council to determine probable lengths of voyages for purposes of Act.

(2) Until otherwise determined under this section, the probable length of the voyage by sailing-vessels from the ports mentioned in the third schedule to the countries mentioned in that schedule, shall be deemed to be the lengths stated in that schedule.

103. On and from such a date as the Governor General in Council may, by notification in the Gazette of India, have fixed or may hereafter, by like notification, fix in this behalf with respect to any protected Native State adjoining the Straits Settlements, or with respect to any country for labour in which Natives of India are recruited exclusively through the agency of the Government of the Straits Settlements, a Native of India departing by sea out of British India under an agreement to labour for hire in any such State or country shall not, so long as the notification continues to apply to the State or country, be deemed to emigrate within the meaning of this Act.

Provisions supplementary to section 2, sub-section (1) (iv), of this Act.

Leg. Changes :—[1] and [2] Substituted by Act IV of 1914.

Application of Act to emigration from British ports to French and Dutch Colonies.

104. The provisions of this Act shall apply to emigration from British Indian ports—

(a) to the French Colonies, under the terms of the Convention executed at Paris on the first day of July 1861, and ratified at the same place on the thirtieth day of July 1861, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the Emperor of the French ; and

(b) to the Netherlands colony of Dutch Guiana under the terms of the Convention executed at the Hague on the eighth day of September 1870, and ratified at the same place on the seventeenth day of February 1872, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the King of the Netherlands :

Provided that emigration to the French Colonies, or any of them, shall not be lawful until a notification under section 4, sub-section (1), has been issued in respect thereof ; but subject to this proviso, in any case in which there is any conflict between the provisions of this Act and those contained in either of those Conventions, the latter shall prevail.

105. The provisions of this Act shall, so far as they relate to proceedings which are to be conducted in British India, apply, in the case of Natives of India who depart by sea from a French port in India under an agreement to labour for hire in a French colony, under the Convention between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the Emperor of the French referred to in the last foregoing section as if such Natives were emigrants

within the meaning of this Act :

Provided that, in any case in which there is any conflict between the provisions of this Act and those contained in that Convention, the latter shall prevail.

Prohibition of departure by land of a Native of India under an agreement to labour for hire in some country beyond the sea.

106. (1) The departure by land out of British India of a Native of India under, or with a view to entering into, an agreement to labour for hire in some country beyond the sea other than the Island of Ceylon or the Straits Settlements is prohibited :

Provided that nothing in this section applies to the departure by land of a Native of India for the purpose of departing by sea from a French port in India under an agreement to labour for hire in a French colony in accordance with the Convention referred to in section 104, clause (a), and section 105.

(2) Whoever induces, or attempts to induce, any Native of India to depart by land out of British India in contravention of this section shall be deemed to have committed an offence under section 82.

Power to declare whole or part of Act and rules inapplicable to Natives of India engaged for His Majesty's Government to labour for hire in any country beyond the sea.

107. The Governor General in Council may, by notification in the Gazette of India, declare that all or any of the provisions of this Act or the rules thereunder shall not apply, or shall apply subject to such conditions, modifications or restrictions as to the Governor General in Council may seem expedient in the case of Natives of India departing out of British India under an agreement made with, or on behalf of, His Majesty's Government to labour for hire in any country beyond the sea :

Provided that no notification under this section shall be issued unless the Governor General in Council is first satisfied that the fair treatment of Natives of India so departing out of British India has, by rules or otherwise, duly been secured.

CHAPTER XV.

SAVINGS AND REPEALS.

Saving for Government vessels.

108. Nothing in this Act or in any rule made under this Act shall apply to any vessel belonging to, or in the service of, His Majesty or of the Government of India.

VII of 1871.

109. All contracts entered into under the Indian Emigration Act, 1871, and Act No. XIV of 1872 (*to exempt the Straits Settlements from the Indian Emigration Act, 1871*), or under any enactment hereby repealed, and in force at the commencement of this Act, shall, so far as they are consistent with this Act, be deemed to have been entered into under this Act.

Repeals.

[1] 110.

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THE FIRST SCHEDULE.

(See section 4.)

COUNTRIES TO WHICH EMIGRATION IS LAWFUL.

I.—The British Colonies of Mauritius, Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, Natal, St. Kitts, Nevis, Fiji, and Seychelles.

II.—The Netherlands Colony of Dutch Guiana.

III.—The Danish Colony of St. Croix.

THE SECOND SCHEDULE.

(See section 17.)

FORM OF RECRUITER'S LICENSE.

OFFICE of the Protector of Emigrants at the Port of

A. B., described in the descriptive roll annexed, is hereby licensed under the Indian Emigration Act, 1908, to be a recruiter of emigrants for [here state the country for which the recruiter is licensed to recruit] in [here specify the area within which the recruiter is licensed to recruit].

This license will be in force until the

of
unless previously cancelled.

(Signed) C. D.,
Protector of Emigrants.

Dated the day of

Leg. Changes :—[1] Repealed by Act X of 1914.

Descriptive Roll.

Name.	Father's name.	AGE.		Caste.	Colour.	HEIGHT.		Distinguishing marks.	Name of village, local sub-division (tahsil, taluq, etc.), and district to which he belongs.
		Years.	Months.			Feet.	Inches.		

THE THIRD SCHEDULE.

(See section 102.)

PROBABLE LENGTHS OF VOYAGE BY SAILING VESSEL UNDER
THIS ACT.

FROM CALCUTTA—

To Mauritius	{ From the month of April to the month of October, both inclusive, ten weeks; and from the month of November to the month of March, both inclusive, eight weeks.
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To Fiji, British Guiana,
Trinidad, Grenada, St
Vincent, St. Kitts, Nevis,
St. Croix, and Dutch
Guiana. } Eighteen weeks.

To Natal ... Twelve weeks.
To Jamaica and St. Lucia ... Twenty weeks.

Employers ACT IX OF 1860 (EMPLOY. & WORK. DISPUTES).

FROM MADRAS—

To Mauritius	...	...	{ From the month of April to the month of October, both inclusive, seven weeks; and from the month of November to the month of March, both inclusive, six weeks.
To the Seychelles	...	...	{ During the north-east monsoon, five weeks; and during the south-west monsoon, six weeks.
To Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, St. Kitts, Nevis, St. Croix, and Dutch Guiana.			{ Nineteen weeks.
To Natal	...	...	Ten weeks.
To Fiji	...	...	Seventeen weeks.

FROM BOMBAY—

To Mauritius	...	...	{ From the month of April to the month of September, both inclusive, five weeks; and from the month of October to the month of March, both inclusive, six weeks.
To Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, St. Kitts, Nevis, St. Croix, and Dutch Guiana.			{ Nineteen weeks.
To Natal	...	...	Ten weeks.
To Fiji	...	...	Seventeen weeks.

[4] THE FOURTH SCHEDULE.

* * * *

**THE EMPLOYERS AND WORKMEN
DISPUTES ACT, 1860.**

(ACT IX OF 1860.)

[Passed on the 12th March, 1860.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1860	IX	Employers and Workmen Disputes.	Rep. in pt., Act IX of 1871.

Leg. Changes:—[1] Repealed by Act X of 1914.

S. 6 ACT IX OF 1860 (EMPLOY. & WORK. DISPUTES). Employers

An Act to make provision for the speedy determination of certain disputes between workmen engaged in Railway and other public works and their employers.

WHEREAS it is expedient to make provision for the speedy determination of certain disputes between workmen engaged in

Preamble. railway and other public works and their employers ;

It is enacted as follows :—

1. It shall be lawful for the executive Government of any presidency or place within the British territories in India to invest any Magistrate or other officer exercising the powers of a Magistrate with power to enquire into and decide disputes on account of wages, hire of carriage, or the price of work, between any workmen employed in the construction of any railway, canal, or other public work, the construction of which is, or shall be, sanctioned by Parliament or by any such executive Government, and the person or persons by whom such workmen are employed.

Government may empower any Magistrate to decide disputes as to wages or price of work.

2. Magistrates empowered to decide disputes under the preceding section shall have jurisdiction only in case the amount in dispute shall not exceed the sum of two hundred rupees * * * [1]

Pecuniary limit of Magistrates to have jurisdiction.

3. The executive Government shall fix, and may, from time to time, alter the local limits of the jurisdiction of any Magistrate invested with jurisdiction under section 1 of this Act. A Magistrate so invested may hold a court for the investigation of disputes of the nature described in the said section, at any place within the local limits of his jurisdiction.

Local limits of Magistrate's jurisdiction.

4. The rules for the institution of suits as provided in Act VIII of 1859 [for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter] [2] shall, as far as circumstances will allow, be followed in the investigation of disputes under the preceding sections, and the procedure adopted shall be that provided for cases in which the suit may be disposed of at the first hearing.

Procedure in the investigation of disputes.

5. There shall be no appeal against any decision passed under this Act.

No appeal.

6. The Magistrate, having heard and decided the case, shall make an order for the payment of such sum of money (if any) as shall appear to him to be justly due: and if the person ordered to pay shall make default in the payment of such sum immediately or within such time as the Magistrate shall direct, the Magistrate shall issue his warrant to levy the money by distress and sale of the goods and chattels of the defaulter.

Order for payment.

Distress.

Leg. Changes:—[1] Repealed by Act IX of 1871. [2] See now the Civ. Pro. Code, Act XIV of 1882.

7. If any question shall arise whether any goods or chattels seized under the warrant of distress belong to the defaulter, or are liable to be distrained and sold as aforesaid, the same shall be determined in the manner provided by the said Act VIII of 1859 for the determination of the like questions arising in the execution of decrees.

Questions as to property distrained.

8. Any person who shall voluntarily engage for a stipulated period to work on any railway, canal, or other public work, the construction of which is or shall be sanctioned in the manner specified in section 1 of this Act, or to execute any specific work in connection with such public work, and who shall wilfully and without lawful or reasonable excuse neglect or refuse to perform the work so stipulated for, shall be liable, on conviction before a Magistrate, to a fine not exceeding twenty rupees.

Penalty for workmen neglecting or refusing to work.

The Magistrate may, at the request of the complainant or of any one authorized to act on his behalf, instead of fining such person, order him to perform or get performed the work according to the terms of his contract or engagement; and if he shall fail to comply with the order, the Magistrate may, upon proof to his satisfaction of such non-compliance, sentence such person to be imprisoned with or without hard labour for any term not exceeding two months.

9. This Act shall take effect only in those districts or places to which it shall be extended by order of the Governor General of India in Council, or of the executive Government of any presidency or place.

Operation of Act.

THE ENEMY TRADING ACT, 1915.

(ACT XIV OF 1915.)

[Passed on the 1st October, 1915.]

An Act to provide facilities for the payment to a public authority of certain moneys, the payment of which is, or may be, prohibited owing to the present war, and to provide for other matters in connection with trading with foreigners.

WHEREAS it is expedient to provide facilities for the payment to a public authority of certain moneys, the payment of which is, or may be, prohibited by, or under the provisions of, any Proclamation or Order in Council of His Majesty for the time being in force, relating to trading, commercial intercourse, or other dealings with subjects of States at war with His Majesty, and to afford like facilities in the case of moneys due to certain classes of foreigners, and to extend the law relating to the contravention of the provisions of any such Proclamation or Order in Council, and to make further provisions as to dealings with foreigners; It is hereby enacted as follows:—

Short title, extent and duration.

1. (1) This Act may be called the Enemy Trading Act, 1915;

8. 5 **ACT XIV OF 1915 (ENEMY TRADING). Enemy Trading**

(2) It extends to the whole of British India, including the Sonthal Parganas ; and

(3) It shall remain in force during the continuance of the present war, and for a period of six months thereafter.

Definitions.

2. In this Act,—

"custodian" means a custodian of enemy property appointed under this Act ;

"Enemy Trading Proclamation" means any Proclamation or Order in Council of His Majesty for the time being in force, relating to trading, commercial intercourse or other dealings with subjects of States at war with His Majesty ;

"foreigner" has the same meaning as in the Foreigners Act, 1864 : III of 1864.

"prescribed" means prescribed by rules made under this Act.

3. (1) The Governor General in Council shall appoint so many persons, as he thinks fit, to act as custodians for the whole or any part of British India for the purpose of receiving, holding and dealing with such money as may be paid to them in pursuance of this Act.

Constitution of the office of custodian of enemy property.

(2) Custodians shall, subject to the provisions of this Act, have such powers and duties, with respect to the money held by them in their capacity as custodians, as may be prescribed.

(3) If any question arises as to the custodian to whom any money may be paid under this Act, the question shall be determined by the Governor General in Council.

4. (1) Any sum, by way of dividends, interest or share of profits, the payment of which to, or for the benefit of, any person is prohibited by or under any Enemy Trading Proclamation may, subject to the provisions of section 7, be paid by the person by whom it would have been payable, if a state of war had not existed, to the custodian to hold subject to the provisions of this Act.

Power to pay to custodian certain prohibited payments.

(2) Where, before the commencement of this Act, any such sum has been paid into any account with a bank, or has been paid to any other person in trust, the bank or other person may pay the same to the custodian to hold as aforesaid.

(3) On such payment the bank or other person shall be exempt from all liability in respect of such payment.

5. Where, by or under any enactment for the time being in force relating to foreigners, any person is absolutely prohibited from carrying on, or engaging in, any trade or business, or from receiving any money, any sum payable to, or for the benefit of, such person in the way of his trade or business, or any such money may, subject to the provisions of section 7, be paid by the person by whom it is payable, to the custodian to hold subject to the provisions of this Act.

Power to pay to custodian sums the receipt of which is prohibited under enactments relating to foreigners.

6. Any person paying money to a custodian under the provisions of section 4 or section 5 shall, at the same time, furnish such particulars in regard to the payment as the custodian, subject to any rules prescribed in this behalf, may require; until such particulars have been furnished to the satisfaction of the custodian, the custodian shall not grant a receipt for such money.

Particulars of payment to be furnished to custodian.

Power to refuse payments, and to decide whether payment is one to which the Act applies.

7. (1) The custodian may refuse to receive any money on the ground that it is not money to which the foregoing provisions of this Act apply or, with the sanction of the Local Government, for any other reason.

(2) In the event of any question arising as to whether any money is money to which the foregoing provisions of this Act apply, the decision of the custodian on the question shall be final.

8. Where any money is paid to a custodian under the foregoing provisions of this Act, the receipt of such custodian, or any person duly authorised by him to sign receipts on his behalf for any such money, shall be a good discharge to the person paying the same as against the person in respect of whom the money was paid to the custodian.

Receipt of the custodian to be good discharge.

9. (1) The custodian shall hold and deal with any money paid to him under this Act in accordance with such directions as he may receive from the Governor General in Council.

Holding of money by custodian.

(2) Money held by the custodian under this Act shall not, save as may be otherwise prescribed, be liable to be attached or otherwise taken in execution of a decree.

(3) The custodian shall keep a register of all money held by him under this Act, which register shall be open to public inspection at such reasonable times as he may direct.

10. No suit or other proceeding shall lie against a custodian for anything done, or intended to be done, in good faith under this Act or any rule made thereunder.

Protection of custodians.

11. (1) The Governor General in Council may, by notification in the Gazette of India, make rules for carrying into effect the provisions of this Act.

Rule-making power.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the powers and duties of custodians;

(b) the particulars to be furnished to custodians by persons making payments to them; and

(c) the payment of money in the hands of the custodian in satisfaction of decrees and debts.

(3) All rules made under this section shall have effect as if enacted in this Act.

12. The Governor General in Council may, by notification in the Gazette of India, direct that the provisions of section 4

Power to extend provisions of Act to other prohibited payments.

of this Act, enabling certain moneys to be paid to custodians, shall apply to any payments, the making of which is prohibited by or under any Enemy Trading Proclamation and which are not provided for by that

section ; and upon such notification, the Act shall be read and construed as if such payments had been included in section 4.

13. (1) The Governor General in Council may, by order in writing, direct that any money which is in, or may come into, the hands of any public officer by or under the provisions of any enactment for the time being in force relating to foreigners, shall be paid by such officer to such custodian as may be specified in the order.

Power to extend provisions of Act to sums in the hands of public officers under enactments relating to foreigners.

(2) Any money paid to a custodian, in accordance with the provisions of sub-section (1), shall be deemed to be money paid to the custodian in pursuance of this Act, and the provisions of this Act shall apply accordingly.

14. (1) The Governor General in Council may, by order in writing, prohibit or restrict any person or class of persons

Power to prohibit by order payments to certain foreigners.

from carrying on trade or business with, or transferring any property, moveable or immoveable to, any person or class of persons in respect of whom any restriction has been imposed by or under any enactment for the time being in force relating to foreigners.

(2) Any person who contravenes or attempts to contravene the provisions of any order made under sub-section (1) shall be punishable with the punishment provided for an offence under section 4 of the Foreigners Ordinance, 1914.

III of 1914.

(3) The Governor General in Council may, by notification in the Gazette of India, delegate to any Local Government, subject to such restrictions and conditions as he thinks fit, all or any of the powers conferred upon him by this section.

15. Section 3 of the Commercial Intercourse with Enemies Ordinance, 1914, as in force by virtue of section 2 of the VI of 1914.

Amendment of section 3 of Ordinance VI of 1914 as re-enacted by Act I of 1915.

Emergency Legislation Continuance Act, 1915, shall be read and construed as if after the word "contravenes" the words "attempts, or directly or indirectly offers, proposes or agrees, or has, since the 14th day of October, 1914, attempted or directly or indirectly

offered, proposed or agreed, to do any act in contravention of," were inserted.

I of 1915.

THE ENEMY TRADING ACT, 1916.

(ACT X OF 1916.)

[Passed on the 15th September, 1916.]

An Act to prohibit or control trading by hostile foreigners and hostile firms and for other purposes.

WHEREAS it is expedient to take powers further to prohibit or control trading by hostile foreigners and hostile firms and for other purposes ; It is hereby enacted as follows :—

Short title and duration. 1. (1) This Act may be called the Enemy Trading Act, 1916.

(2) It shall remain in force during the continuance of the present war, and for a period of six months thereafter.

Definitions. 2. In this Act,

“ Company ” means any company, firm or association, or body of individuals whether incorporated or not ;

“ Hostile foreigner ” means a subject of a State for the time being at war with His Majesty, and includes any company constituted according to the laws of such State, and the ruler or government of any such State ; and

“ Hostile firm ” means any of the following, namely :—

- (a) any hostile foreigner who has, or at any date subsequent to the 3rd day of August, 1914, had an office, agency or place of business in British India ;
- (b) any company of which any member or officer is a hostile foreigner, or of which a hostile foreigner was a member or officer on the 3rd day of August, 1914, and which has or has had since that date an office, agency or place of business in British India ;
- (c) any person, or company who or which has, at any time since the 3rd day of August, 1914, carried on business in British India, and whose business is, or was, in the opinion of the Governor General in Council, either by reason of its nature or of the persons who carry or carried it on, or for any other cause whatsoever, carried on either under the control whether direct or indirect of any hostile foreigner, or carried on wholly or mainly for the benefit of hostile foreigners generally, or any class of hostile foreigners or any individual hostile foreigner.

3. (1) The Governor General in Council may, by general or special order, appoint Inspectors for the purpose of determining whether any business is or was carried on by a hostile firm within the meaning of this Act.

Power to appoint Inspectors.

(2) The Inspector may summon before him any person whom he believes to be capable of giving information concerning the trade, dealings, affairs or property of such business, and of the antecedents and nationality of those by whom it is or was carried on or controlled.

(3) The Inspector may examine such person on oath concerning the same, and may reduce his answers to writing, and require him to sign them.

(4) The Inspector may require such person to produce any documents in his custody or power in any way relating to such business or to the persons by whom it is or was carried on or controlled.

(5) If any person so summoned refuses to come before the Inspector at the time appointed, the Inspector may cause him to be apprehended and brought before him for examination.

(6) If any person refuses to answer any question or to produce any document, which under this section the Inspector is empowered to ask or require production of, such person shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Power to prohibit
or restrict, or wind
up hostile firms.

4. (1) The Governor General in Council may make an order either —

(a) prohibiting any hostile firm from carrying on business except for the purposes and subject to the conditions, if any, specified in the order; or

(b) requiring the business of such firm to be wound up; and may in any case, where he has made an order prohibiting or limiting the carrying on of the business, at any time, if he thinks it expedient, substitute for that order an order requiring the business to be wound up.

(2) Every order made under sub-section (1) shall be published by notification in the Gazette of India.

(3) If any person contravenes the provisions of any order made under this section, he shall be punishable with imprisonment which may extend to one year, and shall also be liable to fine.

(4) An order made under this section shall continue in force, notwithstanding the termination of the present war, until determined by order of the Governor General in Council.

5. (1) Where the Governor General in Council makes an order under this Ordinance requiring a business to be wound up,
Winding up order. the order shall, on notification in the Gazette of India, have effect as if it were a winding up order made by a Court under the Indian Companies Act, 1913, and the provisions of VII of 1913. that Act relating to winding up by the Court and the rules made thereunder subject to such exceptions, restrictions, extensions, modifications and adaptations as the Governor General in Council may, by general or special order, prescribe, or such other rules as may be prescribed by him, shall apply to the winding up of the business:

Provided that, for the purposes of any winding up order under this Act, all powers exercisable by the Court under the said Act shall be exercisable by the Governor General in Council or by such other authority as he may appoint either generally or specially in that behalf:

Provided also that the assets of the business and any money resulting from the realization of any part thereof shall be dealt with in accordance with such rules as the Governor General in Council may make in that behalf.

(2) Where an order has been made under this Act directing the winding up of the business of a hostile firm, the hostile firm shall not, nor shall any other person, commence or initiate, whilst that order remains in force, any other proceedings of a like nature or calculated in any way to interfere with the carrying out of such order.

6. Where it appears to the Governor General in Council that a contract entered into before or during the war, or a transfer of property, moveable or immoveable, made during the war, with or by a hostile foreigner or a hostile firm is injurious to the public interest, or was made with the object of evading any provision of the law, the Governor General in Council may by order cancel or determine such contract, either unconditionally or upon such conditions as he thinks fit, or declare such transfer to be void either in whole or in part, or may impose such conditions on the transferee as he thinks fit.

(1) The powers conferred by sub-section (1) in respect of transfers of property shall be exercisable also in respect of any subsequent transfer or sub-transfer which, in the opinion of the Governor General, is injurious to the public interest, or was made with the object of evading the law.

(2) On the making of an order under this section declaring any transfer or subsequent transfer or sub-transfer to be void, all property, the transfer of which is declared void by such order, shall, with effect from the date of the order, be deemed to be revested in the original transferor, or, if a winding up order has been made under section 4 (1) (b), in the liquidator.

7. (1) The Governor General in Council in any case where it appears to him to be expedient to do so may by order vest in any custodian appointed under the Enemy Trading Act, 1915, any property, moveable or immoveable, belonging to or deemed to be vested in or managed or held whether in trust or otherwise, for, or on behalf of, a hostile foreigner, a hostile firm, or any person or company residing in, or carrying on business in the dominions of, a State at war with His Majesty, or the right to transfer that property, and may by any such order or any subsequent order confer on the custodian such powers of selling, managing and otherwise dealing with the property as to the Governor General in Council may seem proper.

XIV of 1915. Power of the Governor General in Council to vest property in custodian under the Enemy Trading Act, 1915.

(2) A vesting order under this section shall, notwithstanding the provisions of any other law to the contrary, be sufficient to vest in the custodian any property or the right to transfer any property as provided by the order without the necessity of any further document.

(3) Where, in the exercise of the powers conferred on him by the Governor General in Council, the custodian proposes to sell any shares

or stock forming part of the capital of any company or any securities issued by the company in respect of which a vesting order under this Act has been made, the company may, with the consent of the Governor General in Council, purchase the shares, stock or securities, notwithstanding anything to the contrary in any law or in any regulation of the company, and any shares, stock or securities so purchased may, from time to time, be re-issued by the company.

(4) The transfer by the custodian of any property shall be conclusive evidence in favour of the transferee and of the custodian that the requirements of this section have been complied with.

(5) All property vested in the custodian under this section and the proceeds of the sale of, or money arising from, any such property, shall be dealt with by him in accordance with such directions as he may receive from the Governor General in Council; and no such property or money shall be liable to be attached or otherwise taken in execution.

8. Where a vesting order has been made under this Act as respects any property belonging to, or held or managed for, or on behalf of, a person who appeared to the Governor General in Council to be a person to whom the provisions of section 7 were applicable, the order shall not, nor shall any proceedings thereunder or in consequence thereof, be invalidated or affected by reason only of such person having, prior to the date of the order, died or ceased to be a person to whom the said provisions were applicable, or subsequently dying or ceasing to be such a person or by reason of its being subsequently ascertained that he was not such a person, as the case may be.

9. Where the custodian executes a transfer of any shares, stock or securities which he is empowered to transfer by a vesting order made under this Act the company in whose books the shares, stock or securities are registered shall, upon the receipt of the transfer so executed by the custodian, and upon being required by him so to do, register the shares, stock or securities in the name of the custodian or other transferee, notwithstanding any regulation or stipulation of the company, and notwithstanding that the custodian is not in possession of the certificate, scrip or other document of title relating to the shares, stock or securities transferred; but such registration shall be without prejudice to any lien or charge in favour of the company or to any other lien or charge of which the custodian has express notice.

10. (1) The Governor General in Council may make rules for all or any of the following purposes, namely :—

- (a) providing for the distribution or disposal of any assets, or any money resulting from the realization of any part thereof, of any business in respect of which a winding up order has been made under this Act;
- (b) prescribing that hostile foreigners and hostile firms or any class of hostile foreigners or hostile firms shall, when required

by the custodian, furnish to him such particulars as he may require of all or any moveable or immoveable property in their possession, or under their control whether direct or indirect ;

- (c) requiring persons in British India to furnish to the custodian such particulars as he may require of all or any class of debts or other property due by them to any person to whom the provisions of section 7 are or may be applicable ;
- (d) prescribing the remuneration payable to the custodian in respect of his duties under this Act, the fund from which it shall be paid, and the method of collecting the same ; and
- (e) generally for carrying out the purposes of this Act.

(2) In making any rule under this section, the Governor General in Council may direct that a breach of it shall be punishable with imprisonment which may extend to a term not exceeding six months, or with fine which may extend to one thousand rupees, or with both.

Certain licenses under the Hostile Foreigners (Trading) Order to be deemed to be orders issued under section 4 (1) (a).

11. Every license for the time being in force granted under the Hostile Foreigners (Trading) Order permitting the licensee to trade or carry on business subject to conditions or restrictions shall be deemed to be an order made under section 4 (1) (a) of this Act and this Act shall have effect accordingly.

12. (1) The Governor General in Council may, by notification in the Gazette of India, declare that the powers conferred by section 7 in regard to the property, moveable or immoveable, of the persons referred to therein shall extend to the property, moveable or immoveable, in British India, of any company specified in such notification of which any member is a hostile foreigner or of which a hostile foreigner was a member or officer on the 3rd day of August, 1914, notwithstanding that such company is not a company trading in British India.

(2) On the publication of a notification under sub-section (1), the company shall be deemed to be a person referred to in section 7 of this Act and this Act shall have effect accordingly.

13. Any act done after the 3rd day of August, 1914 by, or under the orders of, any officer of Government in respect of the property, moveable or immoveable, of any hostile foreigner or hostile firm which, if this Act had been in force, could have been validly done in the exercise of the powers conferred thereby, or which could have been conferred thereunder, is hereby validated.

Validation of past action.

Repeal of Ordinance V of 1916.

14. The Enemy Trading Ordinance is hereby repealed.

**S. 1 ACT III OF 1897 (EPIDEMIC DISEASES). Epidemic Diseases
THE ENEMY TRADING ORDERS (VALIDATION)
ACT, 1918.**

(ACT XV OF 1918.)

[Passed on the 12th September, 1918.]

An Act to terminate doubts which have arisen as to the continuance in force of notifications, orders and rules made or issued under the Enemy Trading Ordinance, 1916.

WHEREAS doubts have arisen as to the continuance in force of notifications, orders and rules made or issued under the Enemy Trading Ordinance, 1916, after the repeal of the said Ordinance by the Enemy V of 1916. Trading Act, 1916, and it is expedient to terminate such doubts: It is X of 1916. hereby enacted as follows:—

Short title. 1. This Act may be called the Enemy Trading Orders (Validation) Act, 1918.

Orders made under the Enemy Trading Ordinance to be deemed to be, and always to have been, in force. 2. Every notification, order or rule which was made or issued under any provision of the Enemy Trading Ordinance, 1916, and which was in force V of 1916. immediately prior to the repeal of the said Ordinance, shall be deemed to have continued in force notwithstanding such repeal, and to have been made or issued under the Enemy Trading Act, 1916. X of 1916.

THE EPIDEMIC DISEASES ACT, 1897.

(ACT III OF 1897.)

[Passed on the 4th February, 1897.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1897	III	Epidemic Diseases	Rep. in pt., Act XIII of 1898. " " Act X of 1914.

An Act to provide for the better prevention of the spread of Dangerous Epidemic Disease.

WHEREAS it is expedient to provide for the better prevention of the spread of dangerous epidemic disease; It is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called the Epidemic Diseases Act, 1897.

Epidemic Diseases ACT III OF 1897 (EPIDEMIC DISEASES). S. 2

(2) It extends to the whole of British India (inclusive of [1]* British Baluchistan, the Santal Parganas and the Pargana of Spiti); [2]*

[2] (3) * * *

2. (1) When at any time the Governor General in Council is satisfied that India or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the Governor General in Council, if he thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take or require or empower any person (a) to take such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as he shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed.

(2) In particular and without prejudice to the generality of the foregoing provisions, the Governor General in Council may take measures and prescribe regulations (b) for—

(a) the inspection of any ship or vessel leaving, or arriving at, any port in British India and such detention thereof, or of any person intending to sail therein or arriving thereby, as may be necessary; and

(b) the inspection of persons travelling by railway or otherwise and the segregation, in hospital, temporary accommodation or otherwise, of persons suspected by the inspecting officer of being infected with any such disease.

(3) The Governor General in Council may, by general or special order, direct that all or any of the powers conferred by this Act may also be exercised by any Local Government with respect to the territories administered by it.

3. Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence (c) punishable under section 188 of the Indian Penal Code.

XLV of 1860.

Penalty.
Protection to persons acting under Act.

4. No suit or other legal proceeding shall lie against any person for anything done or in good faith intended to be done under this Act.

Leg. Changes:—[1] Repealed by Act XIII of 1898. [2] Repealed by Act X of 1914.

Case-law:—(a) Collector authorized to take measures cannot delegate his powers, 14 M.L.T. 443 = (1913) M.W.N. 928. (b) As to cases decided under rules enacted under this Act, see Rat. Un. Cr. C. 966 and 978; 1 Bom. L.R. 51. (c) To constitute offence under this section it is not necessary to prove accused's disobedience was likely to cause danger, 14 M.L.T. 443 = (1913) M.W.N. 928.

S. 2 ACT XI OF 1856 (EUROPEAN DESERTERS). **European Deserters**

THE EUROPEAN DESERTERS ACT, 1856.

(ACT XI OF 1856.)

[Passed on the 11th April, 1856.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1856	XI	European Deserters ...	Rep. in pt., Act XIV of 1870. " " Act XII of 1873. " " Act XVI of 1874.

*An Act for the better prevention of desertion by European Soldiers from the Land Forces of Her Majesty [1] * * * * in India.*

WHEREAS it is expedient to make better provision for apprehending and detaining European deserters from the Land Forces in the Service of Her Majesty [1]* * * in India, and for punishing persons who aid and encourage such deserters ; It is enacted as follows :—

1. If it shall appear that any officer or soldier, being a deserter from the said Forces, has been concealed on board any merchant vessel, and that the master or person in charge of such vessel for the time being, though ignorant of the fact of such concealment, might have known of the same but for some neglect of his duty as such master or person, or for the want of proper discipline on board his vessel, such master or person shall be liable to a fine not exceeding five hundred rupees :

Penalty on master in certain cases if a deserter be concealed on board his ship.

Provided always, that no conviction for such offence, as is herein before described shall be lawful unless the same shall be stated in the charge which the party is called upon to answer ; and in such charge, it shall be lawful to state in the alternative that the party has either knowingly harboured or concealed a deserter on board his vessel, or has, by neglect of duty or by reason of the want of proper discipline on board the vessel, allowed such deserter to be so concealed.

2. Any person, whether a European British subject or not, who shall be guilty of an offence punishable under this Act, shall be punishable for the same by any Justice of the Peace for any of the Presidency Towns of Calcutta, Madras, and Bombay, [2] * * * * , Magistrate, [3] * * or person lawfully exercising the powers of a Magistrate in any Port within the Territories of the East India Company within whose jurisdiction the offence may have been committed, or such person may have

Leg. Changes :—[1] The words "and of the East India Company" were repealed by Act XIV of 1870. [2] The words "or for any of the Settlements of Prince of Wales, Island, Singapore, and Malacca" were repealed by Act XVI of 1874. [3] The words "Joint Magistrate" were repealed by Act XVI of 1874.

European Deserters ACT XI OF 1856 (EUROPEAN DESERTERS). S. 3

been apprehended or found, whether the offence shall have been committed within the local limits of the jurisdiction of such officer or not ; and any person hereby made punishable by a Justice of the Peace shall be punishable on summary conviction.

3. No conviction, order, or judgment of any Justice of the Peace shall be quashed for error of form or procedure, but only on the merits ; and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds ; but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment, in obedience to any writ of *certiorari* ; and, if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment shall be aided by what so appears in such depositions.

4. Nothing in this Act contained shall prevent any Justice of the Peace, Magistrate, or other officer having authority in that behalf from committing for trial any person who shall be charged with an offence punishable under [1] * * any other Act hereafter to be in force, notwithstanding that such offence may be also punishable under this Act :
 Provided that no proceedings shall have been had against such person in respect of the same offence under this Act.

5. Whenever, on information given on oath or solemn affirmation, where by law a solemn affirmation may be used instead of an oath, to the Commanding Officer of any fort, garrison, station, regiment, or detachment, at any port or place within the territories of the East India Company, in which no person lawfully exercising magisterial powers can be found, which oath or affirmation the several persons above named shall severally under this Act have power to administer ;

or whenever, on such information as aforesaid given to any Justice of the Peace, Magistrate, [2] * * or person lawfully exercising the powers of a Magistrate, having jurisdiction within such port or place,

there shall appear reason to suspect that any European officer or soldier belonging to the said Forces, who may have deserted or be absent without leave, is on board any ship, vessel or boat, or is concealed on shore at any such port or place within the territories of the East India Company, it shall be lawful for such Commanding Officer or Justice of the Peace, Magistrate, [2] * * or person lawfully exercising the powers of a Magistrate as aforesaid, to issue a warrant authorizing the person or persons to whom such warrant may be addressed, to enter into and search, at any time of the day or night, any such ship, vessel or boat, or any house or place on shore, and to apprehend any such officer or soldier, and to detain him in custody in order to his being dealt with according to law.

Leg. Changes :—[1] The words " Act No. XIV of 1859 or," were repealed by Act XVI of 1874. [2] The expression " Joint Magistrate " was repealed by Act XII of 1873.

§. 1 ACT IX OF 1874 (EUROPEAN VAGRANCY). European Vagrancy

6. The warrant to be issued under the preceding section may be addressed to any European officer or soldier of the said Forces, or to all constables, peace officers, and other persons who may be bound to execute the warrant of any Justice of the Peace, Magistrate, [1] * * or person lawfully exercising the powers of a Magistrate, and acting in the execution of this Act; and all such persons shall be bound to execute, perform and obey such warrant.

7. Every person who shall be apprehended under any warrant under the 5th section of this Act, shall be brought without delay before a Justice of the Peace, Magistrate, [1] * * or person lawfully exercising the powers of a Magistrate, in or near the place wherein such person shall have been arrested, who shall examine such person, and, if he shall be satisfied, either by the confession of such person or the testimony of one or more witness or witnesses, or by his own knowledge, that such person is a deserter from the said Forces, shall cause him to be delivered, together with any depositions and papers relative to the case, to the Commanding Officer of the regiment, corps or detachment to which he shall belong, if the same shall be in or near the place of such arrest, or, if otherwise, then to the Commanding Officer of the nearest military station, in order that he may be dealt with according to law.

THE EUROPEAN VAGRANCY ACT, 1874.

(ACT IX OF 1874.)

[Passed on the 7th April, 1874.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1869	XXI	European Vagrancy ...	Rep., Act IX of 1874.
1871	XXVIII	European Vagrants ...	Do.
1874	IX	European Vagrancy ...	Rep. in pt., Act I of 1879. Am., Act XII of 1891. Rep. in pt., and Am., Acts IV and X of 1914.

An Act to consolidate and amend the Law relating to European Vagrancy.

WHEREAS it is expedient to consolidate and amend the laws relating to persons of European extraction who wander in a destitute condition throughout India; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. This Act may be called the European Vagrancy Act, 1874.

Leg. Changes:—[1] The expression "Joint Magistrate" was repealed by Act XII of 1878.

European Vagrancy ACT IX OF 1874 (EUROPEAN VAGRANCY). S. 2:

It extends to the whole of British India and to the dominions of Princes and States in India in alliance with Her Majesty;
Local extent.

And it shall come into force at once: Provided that sections 4 to 16 (both inclusive), 19, 20, 24 and 29 shall not come into force in Coorg, or in the Andaman and Nicobar Islands, or in any of the dominions of the Princes and States in India in alliance with Her Majesty not situate within the limits of any Presidency, Lieutenant-Governorship or Chief Commissionership in British India, until such day or respective days as the Governor General in Council from time to time, by notification in the Gazette of India, appoints in this behalf.
Commencement.

2. Acts No. XXI of 1869 (*to provide against European Vagrancy*) and No. XXVIII of 1871 (*to amend the European Vagrancy Act, 1869*) are hereby repealed.
Repeal of Acts.

But all appointments and orders made, work houses provided, certificates given, powers conferred, rules prescribed and exemptions granted under the former Act, shall be deemed to have been respectively made, provided, given, conferred, prescribed and granted under this Act.

3. In this Act—
Interpretation-clause. "Person of European extraction."
"Person of European extraction" includes—
(a) persons born in Europe, America, the West Indies, Australia, Tasmania, New Zealand, Natal or the Cape Colony,

(b) the sons and grandsons of such persons,

but does not include persons commonly called Eurasians or East Indians:

"Vagrant" means a person of European extraction found asking for alms, or wandering about without any employment or visible means of subsistence:

"Master of a ship." "Master of a ship" includes any person in charge of a decked vessel:

And in Parts III and V of this Act "Magistrate" means, within the limits of the towns of Calcutta, Madras and Bombay, a Magistrate of Police, and, outside those limits, a person exercising powers under the Code of Criminal Procedure not less than those of a Magistrate of the second class.

PART II.

PROCEDURE.

4. Any Police-officer may, within the limits of the towns of Calcutta, Madras and Bombay, require any person who is apparently a vagrant to accompany him or any other Police-officer to, and to appear before, the nearest Magistrate of Police,^[1] and may, without those limits, require any such person to accompany him or
Power to require apparent vagrant to go before Magistrate.

Leg. Changes:—[1] Read now "Presidency Magistrate," see Act V of 1898, S. 3.

S. 7 ACT IX OF 1874 (EUROPEAN VAGRANCY). European Vagrancy

any other Police-officer to, and to appear before, the nearest Justice of the Peace exercising the powers of a Magistrate of the first class under the Code of Criminal Procedure.

Summary inquiry into vagrant's circumstances. **5.** The Magistrate of Police [1] or Justice shall in such case, or in any other case where a person apparently a vagrant comes before him, make a summary inquiry into the circumstances and character of the apparent vagrant; and if he is satisfied that such person is a vagrant, he shall record in his office a declaration to that effect.

Declaration of vagrancy.

Order to go to workhouse. If he is further of opinion that the vagrant is not likely to obtain employment at once, or if he has reason to believe that a declaration of vagrancy has on any former occasion been recorded in respect of such vagrant, he shall require the vagrant to go to a Government workhouse, and shall draw up an order to that effect.

The vagrant shall then be placed in charge of the Police for the purpose of being forwarded to the workhouse, and the said order shall be a sufficient authority to the Police for retaining him in their charge while he is on his way to the workhouse, and to the Governor of the workhouse for receiving and detaining such vagrant.

Forwarding vagrant to place of employment. **6.** Where the officer making the inquiry mentioned in section 5 is of opinion that the vagrant is likely to obtain employment in any place subject to the Local Government, or (when the vagrant is in any part of the dominions mentioned in section 1) in any place subject to any adjacent Local Government, such officer may, in his discretion, forward the vagrant to such place in charge of the Police, and draw up an order to that effect.

Such order shall be a sufficient authority to the Police for retaining the vagrant in their charge while he is on his way to such place of employment.

Assistance to obtain employment. **7.** Upon his arrival at the place of employment, the vagrant shall be taken before the nearest Magistrate of Police [1] or Justice of the Peace exercising powers as aforesaid, to whom the order for transmission shall be delivered.

Such officer shall, thereupon to the best of his ability, assist the vagrant in seeking employment, and may in the meantime, if he think fit, keep the vagrant in the charge of the Police.

Should the vagrant fail to obtain suitable employment within a reasonable time not exceeding fifteen days from such arrival, such officer shall forward him to a Government workhouse in the manner provided by section 5.

Leg. Changes :—[1] Read now "Presidency Magistrate," see Act V of 1898, S. 3..

European Vagrancy ACT IX OF 1874 (EUROPEAN VAGRANCY). §. 8

8. Every person while in charge of the Police, whether before inquiry as to his vagrancy, or while he is on his way, Subsistence allowance. under section 5, to the workhouse, or under section 6, to a place of employment, shall be entitled to an allowance for his subsistence at the rate of-eight annas per diem.

The Magistrate of Police [1] or Justice, before whom any vagrant is taken under section 7, may, if he think fit, order the vagrant to receive a similar allowance while he is seeking employment.

The Local Government shall cause such allowance to be paid out of such funds at its disposal and in such manner as it may, from time to time, direct.

9. Any Magistrate of Police [1] or Justice of the Peace exercising powers as aforesaid may, on being satisfied that any person of European extraction is not likely to become a vagrant, give such person a certificate under his hand stating that for a certain time (mentioning it) not exceeding six months from the date of the certificate, and within certain limits (mentioning them), nothing in sections 4, 5, 6 and 7 shall apply to the holder of such certificate; and thereupon, so long as the certificate remains in force, nothing in sections 4, 5, 6 and 7 shall apply to such person within such limits as aforesaid. Power to give certificates.

Every such certificate shall be in the form set forth in the first schedule to this Act annexed, or as near thereto as circumstances will admit. Form of certificate.

10. The Local Government may, from time to time, by notification in the official Gazette, invest any Justice of the Peace, District Superintendent of Police, or Assistant District Superintendent of Police with the jurisdiction and powers conferred by this Part on a Justice of the Peace exercising powers as aforesaid. Power to invest certain officials with jurisdiction of Justices under sections 5, 7, 8 and 9.

PART III.

GOVERNMENT WORKHOUSES.

11. The Local Government [2] * * * may provide workhouses with their necessary furniture and establishment, at such places as it may think proper, for the temporary reception of vagrants, Provision of Government work-houses.

or may, by writing under the hand of a Secretary to such Government, certify any building, or part of a building not provided as a workhouse under the former part of this section, to be fit for a workhouse for the purposes of this Act. Every such certificate shall be published in the local official Gazette, and thereupon such building or part of a building shall, until the Local Government otherwise orders, be deemed a Government workhouse under this Act.

Leg. Changes:—[1] Read now "Presidency Magistrate", see Act V of 1898, §. 3 [2] The words "with the previous sanction of the Governor General in Council" were omitted by Act IV of 1914.

S. 14 ACT IX OF 1874 (EUROPEAN VAGRANCY). European Vagrancy

The Local Government shall allow the same scale of diet for the support of vagrants received in such workhouses as is for the time being allowed for Europeans confined in the local prisons or penitentiaries.

Scale of diet.

12. Every such workhouse shall be under the immediate charge of a Governor, who shall be appointed, and may be suspended or removed, by the local Government.

Superintendence of work-houses.

Every such Governor shall, if the Local Government think fit, be subject to the orders of a Committee of Management appointed from time to time by such Government, or, in the absence of a Committee, to the orders of such officer as the Local Government from time to time appoints in this behalf.

13. Every such Governor may order that any vagrant admitted to the workhouse under his charge shall be searched, and that the vagrant's bundles, packages and other effects shall be inspected, and may direct that any money then found with or on the vagrant, shall be applied (subject to the orders of the Local Government) towards the expense of carrying this Act into execution, and may order that all or any of the said effects shall be sold and that the produce of the sale be applied as aforesaid, but subject to the like orders.

Search of vagrants.

14. Vagrants admitted to workhouses under this Act shall be subject to such rules of management and discipline as may from time to time be prescribed by the Local Government [1] subject to the control [1] of the Governor General in Council.

Discipline.

The Local Government may authorize any Governor of a workhouse to punish (under or not under the supervision and direction of a Committee of Management, as the Local Government thinks fit) any vagrant who knowingly disobeys or neglects any such rule with any one of the following punishments (namely):—

- (a) solitary confinement within the workhouse for any time not exceeding seven days ;
- (b) solitary confinement within the workhouse for any time not exceeding three days upon a diet reduced to such extent as the Local Government may prescribe ;
- (c) hard labour for any time not exceeding seven days ;
- (d) reduction of diet to such extent as the Local Government may prescribe for any time not exceeding five days ;

or in lieu of any such punishment any such vagrant may, on conviction before a Magistrate of such disobedience or neglect, be punishable with rigorous imprisonment in jail for a term which may extend to three months.

Leg. Changes :—[1] The words "subject to the control" were substituted for the words "with the previous sanction" by Act IV of 1914.

European Vagrancy ACT IX OF 1874 (EUROPEAN VAGRANCY). §. 15.

15. The Governor and the Committee of Management (if any) of every such workhouse shall use his and their best endeavours to obtain outside the workhouse suitable employment for the vagrants admitted thereto.

Refusal to accept employment.

When such employment is obtained, any such vagrant refusing or neglecting to avail himself thereof shall, on conviction before a Magistrate, be punishable with rigorous imprisonment for a term which may extend to one month.

PART IV.

REMOVAL FROM INDIA.

16. If after the lapse of a reasonable time no suitable employment is obtainable for any such vagrant, the Local Government may either (when he has entered into such agreement as hereinafter mentioned) cause him to be removed from British India in manner hereinafter provided, the cost of such removal being paid by Government ;

Removal of vagrants.

Cost of removal.

or it may cause sections 23 and 30 to be read to him and may then release him.

17. Any vagrant or other person of European extraction may enter into an agreement in writing with the Secretary of State for India in Council binding himself—

Agreement with vagrants.

- (a) to proceed to such port in British India as shall be mentioned in the agreement ;
- (b) there to embark on board such ship and at such time as is directed by an officer appointed in this behalf by the Local Government of the territories in which such port is situate, for the purpose of being removed from India at the expense of the said Secretary of State in Council ;
- (c) to remain on board such ship until she has arrived at her port of destination ; and
- (d) not to return to India until five years have elapsed from the date of such embarkation.

Every such agreement^[1] * * * * shall be in the form set forth in the second schedule to this Act annexed, or as near thereto as circumstances admit.

Form of agreement.

18. The Local Government of the territories in which the said port is situate, may enter into such contracts for conveyance or otherwise and perform such other acts as may be necessary to carry out such agreement on the part of the said Secretary of State in Council.

Power to perform agreement.

Leg. Changes :—[1] The words " may be on unstamped paper and " were repealed by the Indian Stamp Act, 1879 (I of 1879), which exempted these agreements from stamp-duty.

S. 22 ACT IX OF 1874 (EUROPEAN VAGRANCY). European Vagrancy

PART V.

PENALTIES.

19. Any person refusing or failing to accompany a Police-officer to, or to appear before, a Magistrate of Police [1] or Justice of the Peace, for the purpose of preliminary inquiry, when required so to do under section 4, may be arrested without warrant and shall be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with imprisonment for a term which may extend to one month, or with fine, or with both.

And any person who, when required under section 4 to accompany a Police-officer to, or to appear before, a Magistrate of Police [1] or Justice of the Peace, commits an offence punishable under section 353 of the Indian Penal Code, may, XLV of 1866 whether he be or be not an European British subject, be tried by a Magistrate for such offence.

20. Any vagrant who escapes from the police while committed to their charge under the orders specified in sections 5 and 6,

or who leaves a workhouse, under this Act, without permission from the Governor,

or who having with such permission left a workhouse for a limited time or a specified purpose, fails to return on the expiration of such time or when such purpose has been accomplished or proves to be impracticable,

shall for every such offence be punishable, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

21. Any person entering into an agreement under section 17, and failing to proceed in pursuance thereof to the port therein mentioned,

or refusing to embark when directed so to do under the same section,

or escaping from the ship in which he has so embarked before she has reached her port of destination,

shall for every such offence be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months.

22. Any person returning to India within five years of the date of his embarkation pursuant to any agreement entered into under section 17, unless specially permitted so to do by the Secretary of State for India, shall for every such offence be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

Leg. Changes :—[1] Read now " Presidency Magistrate ", see Act V of 1898, S. 3,

European Vagrancy ACT IX OF 1874 (EUROPEAN VAGRANCY). S. 23:

23. Any person of European extraction found
 Begging. asking for alms when he has sufficient means of subsistence,

or asking for alms in a threatening or insolent manner,

or continuing to ask for alms of any person after he has been required to desist,

shall be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term not exceeding one month for the first offence, two months for the second, and three months for any subsequent offence.

24. Every person imprisoned under section 19, 20, 21, 22 or 23 shall, at the end of his term of imprisonment, be placed before the nearest Magistrate of Police [1] or Justice of the Peace exercising powers as aforesaid, who shall, if he think fit, forthwith deal with him in the manner prescribed by sections 5 and 6.

Procedure on close of imprisonment.

The order of transmission shall certify the fact of the previous conviction.

25. Every master of a ship landing or allowing to land in any part of British India any person of European extraction who has been convicted in any other part of Her Majesty's dominions of felony, or of an offence which, if committed in England, would be felony, shall, on conviction before a Magistrate, be liable, for every such person so landed or allowed to land, to pay a fine not exceeding five hundred rupees and not less than one hundred rupees, and, in default of payment, to imprisonment for any term not exceeding two months,

Penalty on ship-master bringing European convicts to India.

unless the defendant satisfy the Magistrate by evidence (which the defendant is hereby declared competent to give), that he had made due enquiry as to the person so landed, or allowed to land, and that he had no reason to believe that such person had been convicted as aforesaid.

The Governor General in Council may from time to time, by notification in the Gazette of India, exempt from the operation of the former part of this section the masters of any class of ships, on such terms as to the Governor General in Council seem fit, and either in respect of all or of any of the persons on board such ships.

Power to exempt certain shipmasters.

The Governor General in Council may in like manner revoke any exemption made under this section.

26. [2] * * * * *

All fines recovered under this Act shall be paid to the credit of the Government of India, or as the Governor General in Council from time to time directs.

Payment of fines.

Leg. Changes :—[1] Read now " Presidency Magistrate", see Act V of 1898, S. 3.
 [2] The sub-clause *re* Recovery of fines was repealed by Act X of 1914.

S. 31 ACT IX OF 1874 (EUROPEAN VAGRANCY). **European Vagrancy**

- 27.** All prosecutions under this Act may be instituted and conducted by such officer as the Local Government from time to time appoints in this behalf.
- 28.** In imposing penalties under this Part and Part III of this Act, no person shall exceed the limits of jurisdiction prescribed for him by the Code of Criminal Procedure in the case of offenders not being European British subjects.
- 29.** No proceeding under this Act shall be deemed invalid by reason only that the Magistrate of Police [1] or Justice, before whom a person, apparently a vagrant, was required to appear, or before whom a person was placed under section 24 was not the nearest.
- Prosecutions.**
- Limits of jurisdiction.**
- Validity of proceedings where Magistrate is not the nearest.**

PART VI.

MISCELLANEOUS.

- 30.** Any European British subject who, upon the summary enquiry mentioned in section 5, has been determined to be a vagrant, or who has been convicted under section 22 or section 23, shall, so long as he remains in India, be subject, beyond the limits of the said towns, to the provisions of the Code of Criminal Procedure (other than those contained in Chapter XXXVIII [2] of the same Code) applicable to a European not being a British subject.
- Deprivation of privileges of European British subjects under Criminal Procedure Code.**

If from any cause he is committed or held to bail by a Justice of the Peace to take his trial before a High Court, he shall not be at liberty to object to the jurisdiction of such Justice of the Peace or High Court on the ground of anything contained in the former part of this section.

Save as aforesaid nothing herein contained shall be deemed to confer jurisdiction over European British subjects on Magistrates, who, if this Act had not been passed, would have had no such jurisdiction.

- 31.** Whenever any person of European extraction lands in India, or, being a non-commissioned officer or soldier in Her Majesty's Army, leaves that Army in India, under an engagement to serve any other person, or any Company, Association or body of persons in any capacity,
- Liability of importers of Europeans or employers of soldiers becoming vagrants.**

and whenever a sailor of European extraction not being a British subject, is discharged from his ship in any British Indian port,

and becomes chargeable to the State as a vagrant within one year after his arrival in India or leaving the Army, or discharge from his ship, as the case may be, then the person, or Company, Association or body, to serve whom he has so landed in India or left the Army, or, in the case of a sailor, the person who is at the date of the discharge the owner or agent of the ship from which the sailor has been so discharged, shall be liable to pay to the Government the cost of his removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Leg. Changes :—[1] Read now "Presidency Magistrate." see Act V of 1898, S. 3.
[2] See now Chapter VIII of Act V of 1898.

European Vagrancy ACT IX OF 1874 (EUROPEAN VAGRANCY). S. 32

Such costs and charges shall be recoverable by suit as if an express agreement to repay them had been entered into with the Secretary of State for India in Council, by the person, Company, Association, body, owner or agent chargeable.

Recovery of charges.

Liability of consignee in case of Europeans who arrive in charge of animals and become vagrants.

32. When any person of European extraction lands in India, being or having been during his passage to India, or from one Indian port to another, in charge of, or in attendance upon, any animal, and becomes chargeable to the State as a vagrant within one year after his arrival in India, then

the consignee of such animal,
or the agents in India for the sale of such animal,
or, if such consignee or agents cannot be found,
the agent to whom the ship in which such animal arrived in India was consigned,

shall be liable to pay to the Government the cost of such person's removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Any such consignee or agent shall be entitled to charge the consignor or principal for any payment to the Government under this section.

For the purposes of this section 'consignee' includes any person 'Consignee' defined. who undertakes to dispose of such animal for the benefit of the consignor, and

'Agent' defined. 'Agent' includes any person who undertakes the agency of such ship, though it may not have been consigned to him.

33. In any proceeding under this Part, a certified copy of the declaration recorded under section 5 shall be *prima facie* evidence that the European British subject named therein has been, upon the summary enquiry mentioned in that section, determined to be and that he was at the date of the declaration a vagrant.

Evidence of declaration under section 5.

34. The powers and duties conferred and imposed by sections 16 and 18 on a Local Government, may be exercised and performed by such class of officers as the Local Government from time to time, by notification in the official Gazette, appoints in this behalf.

Exercise of powers conferred on Local Government.

35. The powers and duties conferred and imposed by this Act on Magistrates, Justices of the Peace exercising the powers of a Magistrate of the first class, and Police-officers respectively may, in places beyond the limits of British India, be exercised and performed by such persons respectively as the Governor General in Council from time to time, by notification in the Gazette of India, appoints in this behalf.

Exercise in Native States of powers conferred on Magistrates, Justices, and Police.

Sch. II ACT IX OF 1874 (EUROPEAN VAGRANCY). **European Vagrancy**

36. [1] The Local Government subject to the control of [1] the Governor General in Council may, from time to time, make rules consistent with this Act, for the guidance of officers in matters connected with its enforcement.

All such rules shall be published in the [2] local official Gazette, [2] and shall thereupon have the force of law.

THE FIRST SCHEDULE.

(See section 9.)

WHEREAS *E. F.* of , a person of European extraction and holder of this certificate, has appeared before me and satisfied me that he is not likely to become a vagrant within the meaning of the European Vagrancy Act, 1874, THESE ARE TO CERTIFY that for the space of months from the date hereof and within the Province [or District] of nothing in sections 4, 5, 6 and 7 of the same Act shall be deemed to apply to him, unless he is found asking for alms, IN WHICH CASE this certificate shall be void.

(Signed) *G. H.*

Dated this day of 18.

Magistrate of Police [3] for the Town of or Justice of the Peace for exercising the powers of a Magistrate of the class.

THE SECOND SCHEDULE.

(See section 17.)

ARTICLES OF AGREEMENT made this day of 18 BETWEEN the Secretary of State for India in Council of the one part and *C. D.* of, etc., [the vagrant] of the other part: Each of the parties hereto (so far as relates to the acts on his own part to be performed) hereby agrees with the other of them as follows:—

1. The said *C. D.* shall proceed forthwith to the port of [the port of embarkation.]

2. The said *C. D.* shall there embark on board such ship and at such time as an officer appointed in this behalf by the Local Government shall direct.

3. The said *C. D.* shall remain on board such ship until she shall have arrived at her port of destination.

4. The said *C. D.* shall not return to India until five years shall have elapsed from the date of such embarkation, unless specially permitted so to return by the said Secretary of State.

5. The said Secretary of State in Council shall defray the cost of the transit of the said *C. D.* to the said port, and of his lodging and subsistence during such transit and during his detention (if any) at the same

Leg. Changes:—[1] The expression "The Local Government subject to the control of" was inserted by Act IV of 1914. [2] The expression "local official Gazette" for "Gazette of India" was substituted by Act IV of 1914. [3] Read now "Presidency Magistrate." See Act V of 1898, S. 3.

port, and shall contract with the owner of the said ship, or his agent, for the passage of the said *C. D.* on board the said ship, and for his subsistence during the voyage for which he shall embark as aforesaid.

In witness whereof *A. B.* (by order of the Governor General of India in Council [or the Governor of in Council or the Lieutenant-Governor of , or the Chief Commissioner of], on behalf of the said Secretary of State in Council), and the said *C. D.* have hereunto set their hands the day and year first above written.

THE EVIDENCE ACT, 1872.

See VOLUME II.

THE EXCESS PROFITS DUTY ACT, 1919.

(ACT X OF 1919.)

[Passed on the 20th March, 1919.]

An Act to impose a duty on excess profits arising out of certain businesses.

WHEREAS it is expedient to impose a duty on excess profits arising out of certain businesses; It is hereby enacted as follows:—

Short title and 1. (1) This Act may be called the Excess Profits
commencement. Duty Act, 1919.

(2) It shall come into force on the 1st April, 1919.

Definitions. 2. In this Act, unless there is anything repugnant
in the subject or context,—

“accounting period” means the twelve months ending on the 31st March, 1919, or if the accounts of the business have been made up within the said twelve months for the purposes of the Indian Income-tax Act, 1918, in respect of a year ending on any date other than the said 31st March, then the year ending on that other date;

“business” includes any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture;

“Chief Revenue-authority” means the Board of Revenue or the Financial Commissioner in provinces where those authorities exist, and in any other case such authority as the Local Government may declare to be the Chief Revenue-authority for the purposes of this Act;

“prescribed” means prescribed by rules made under this Act.

All expressions used or embodied by reference in this Act which are not hereinbefore defined shall have the same meaning as is attributed to them by the Indian Income-tax Act, 1918.

3. This Act shall apply to every business (other than the businesses specified in Schedule I) which is, during any part of the accounting period, either carried on in British India by any person or owned or carried on in any place in India by a person ordinarily resident in British India.

Application of
Act.

VII of 1918.

VII of 1918.

S. 6 ACT X OF 1919 (EXCESS PROFITS DUTY). **Excess Profits**

4. Subject to the provisions of this Act, there shall, in respect of any business to which this Act applies, be charged, levied and paid on the amount by which the profits in the accounting period exceed the standard profits, a duty (in this Act referred to as "excess profits duty") of an amount equal to fifty per cent. of that excess :

Provided that the amount of the said duty shall not exceed such sum as would reduce the profits in the accounting period below thirty thousand rupees.

5. The profits of a business in the accounting period shall, at the option of the person by whom the excess profits duty in respect of that business is payable, be or be deemed to be,—

- (a) the taxable income as finally ascertained for the purposes of the Indian Income-tax Act, 1918, or VII of 1918.
- (b) when the accounting period in respect of the business ends on any date other than the 31st March, 1919, and the accounts of the business are made up for an additional period ending on the said 31st March, a sum which bears the same proportion to the taxable income of the total period (such taxable income being ascertained as nearly as may be in accordance with the provisions of the said Act) as a period of one year bears to the total period.

Explanation.—The profits in the accounting period shall, notwithstanding any composition in force for the purposes of the said Act, be actually ascertained in accordance with the provisions of that Act.

6. (1) The standard profits of a business shall be as follows :—

- (a) an amount calculated at the rate of 10 per cent., or at such rate not being less than 10 per cent. as may be prescribed, on the capital of the business as existing at the end of the accounting period, in which case the capital of the business shall, for the purposes of this Act, be ascertained in accordance with the provisions of Schedule II ; or
- (b) at the option of the person by whom excess profits duty in respect of the business is payable—
 - (i) if the profits of the business have been assessed in the years 1913 and 1914 for the purposes of the income-tax law then in force—the aggregate of half of the profits so assessed and half of the interest, if any, received in those years on securities forming part of the assets of the business ; or
 - (ii) if the profits of the business have been assessed for the said purposes in the years 1913 and 1914, and in two only of the three years 1915, 1916 and 1917—the aggregate of one-fourth of the profits so assessed and one-fourth of the interest, if any, received in the same four years on securities forming part of the assets of the business ; or

(iii) if the profits of the business have been assessed for the said purposes in all the five years 1913, 1914, 1915, 1916 and 1917—the aggregate of one-fourth of the profits assessed in the years 1913 and 1914 and in such two of the years 1915, 1916 and 1917 as may be selected by the said person and one-fourth of the interest, if any, received in the same four years on securities forming part of the assets of the business :

Provided that if the average capital employed in the business in the years adopted for the purpose of determining the standard profits is less or more than the capital so employed at the end of the accounting period, there shall be made to or from the standard profits an addition or a deduction, as the case may be, which shall bear to the standard profits the same proportion as such increase or decrease of capital bears to the average capital so employed in the years so adopted.

Explanation.—For the purpose of ascertaining the average capital employed, the capital employed in the business in any year shall be deemed to be the capital so employed at the end of that year :

Provided further that if the assessment in any of the said years was made in respect of a period of less than twelve months, that assessment shall, for the purpose of determining the standard profits, be proportionately increased.

(2) If a composition for income-tax was in force in any of the years 1913, 1914, 1915, 1916 and 1917, such composition shall be deemed for the purposes of clause (b) of sub-section (1) to have been the assessment, and the profits shall be determined in accordance therewith :

Provided that the person by whom excess profits duty in respect of the business is payable shall, notwithstanding any such composition, be entitled to have an assessment of the profits of the business made for the purpose of determining the standard profits, in the same way as the assessment would have been made if no such composition had been agreed upon.

(3) Each of the years referred to in sub-sections (1) and (2) shall be deemed to be the twelve months commencing with the 1st of April in the year mentioned.

(4) Notwithstanding anything contained in this section no increase of capital made after the 31st December, 1918, shall be taken into account in any case, and no such increase before that date shall be taken into account when it appears or to the extent to which it appears that the increase was made with intent to evade or has the effect of evading the payment of the excess profits duty.

Power to Collector to make allowances for special circumstances.

7. On the application (made in accordance with the provisions of clause (b) of sub-section (2) of section 11) of any person chargeable with excess profits duty alleging that, owing to any of the following circumstances, namely :—

(a) any change in the constitution of a partnership of which he is or was a member,

S. 8 ACT X OF 1919 (EXCESS PROFITS DUTY). Excess Profits

- (b) any postponement or suspension, as a consequence of the present war, of renewals or repairs,
- (c) any exceptional depreciation or obsolescence (including the cost of replacement during the accounting period), due to the present war, of assets employed in the business,
- (d) the provision, in connection with the requirements of the present war, of plant or machinery which will not be required for the purposes of the business after the termination of the war,
- (e) the fact that the assets of the business consist to any material extent of shares in a company the business of which is itself chargeable to excess profits duty,
- (f) the liability of any part of the profits of the business to excess profits duty in the United Kingdom, or
- (g) any special circumstances connected with the nature of the business or the period for which any profits are ascertained or determined,

the provisions of this Act for the calculation of excess profits duty operate unfairly in his case, the Collector may make such allowances in calculating the amount of the duty as seem to him to be necessary to meet the special circumstances, provided that any such allowance shall not reduce the amount of duty payable under the provisions of the Act by more than twenty-five per cent. without the previous sanction of the Commissioner.

8. (1) If any person who has applied under section 7 is dissatisfied with the decision of the Collector on his application, **Appeal to Chief Revenue-authority.** he may appeal to the Chief Revenue-authority which shall, at the option of such person, either itself decide such appeal or refer it to a Board of Referees to be appointed by the Local Government. The Board shall hear and consider any appeal so referred and shall communicate its decision to the Chief Revenue-authority.

(2) The Chief Revenue-authority and the Board shall be entitled to take into account any of the circumstances specified in section 7, and to modify the decision of the Collector with reference thereto in such way and to such extent as they may consider just and equitable.

(3) Every Board of Referees appointed under this section shall consist of three or, in cases which the Local Government considers to be of difficulty or importance, of four persons. When the Board consists of four persons, the Local Government shall appoint one of the members to be Chairman. In any case at least two members of the Board shall be persons not in the service of Government and having in the opinion of the Local Government adequate business experience.

(4) In case of a difference of opinion between the members of the Board, the opinion of the majority shall prevail. When the Board consists of four members and the members are equally divided in opinion, the Chairman shall have a second or casting vote.

(5) The decision of the Chief Revenue-authority on any appeal under this section or of the Board where an appeal is referred to it shall, notwithstanding any other provision of this Act, be final, and shall be deemed to be the basis of assessment in the particular case.

9. (1) The Governor General in Council may, on the application made before the 30th June, 1919, of any person alleging that owing to special circumstances to be stated in the application the provisions of this Act for the calculation of excess profits duty would operate unfairly in the case of any class of business in which such person is engaged, refer such application for the report of a Board of Special Referees to be appointed in this behalf by the Governor General in Council.

Power of Governor General in Council to deal with hardship in case of a class of business.

(2) Every Board appointed under this section shall consist of four persons, of whom at least two shall be persons not in the service of Government. The Governor General in Council shall appoint one member to be Chairman.

(3) On receipt of the report of the Board, the Governor General in Council shall consider the same and pass thereon such orders as he thinks fit. Any such order may vary the basis or method of assessment in respect of the class of business so reported on, and any variations so made shall be deemed to be modifications of this Act in respect of the matters to which they relate, and this Act shall apply accordingly.

10. Every liquidator of a company which is being wound up at the commencement of this Act or is wound up after the commencement of this Act and which is chargeable to excess profits duty shall before the 31st May, 1919, or within two months of the commencement of the winding up, as the case may be, give notice of the fact to the Collector.

Notice to be given by liquidator that excess profits have been made.

11. (1) The Collector may, for the purposes of this Act, require any person whom he believes to be engaged in any business to which this Act applies, or to have been so engaged during the accounting period or in the year ending on the 31st March, 1912, or on the 31st March in any year thereafter, to furnish him within two months after service upon him of a notice to that effect with such particulars in connection with the business as the Collector may require.

Returns for the purposes of the Act.

(2) At the time of furnishing such particulars such person shall—

(a) state the method which he desires to be adopted for the purpose of—

(i) ascertaining the profits of the business in the accounting period under section 5, and

(ii) determining the standard profits under section 6, and

(b) make any application which he desires to make under section 7 for an allowance in the calculation of the amount of the excess profits duty.

S. 17 ACT X OF 1919 (EXCESS PROFITS DUTY). Excess Profits

(3) Where any person fails, without reasonable cause or excuse, to comply with the provisions of clause (a) of sub-section (2), the Collector shall proceed to ascertain the profits of the accounting period and to determine the standard profits by such method provided in this Act as he thinks fit.

12. If a person fails, without reasonable cause or excuse, to give to the Collector in due time any notice required by section 10 or to furnish any particulars referred to in section 11, he shall on conviction by a Magistrate be punishable with fine which may extend to thirty rupees for every day during which the default continues.

13. The amount of excess profits duty to be paid in respect of any business shall be assessed by the Collector, who may in any case where he thinks fit allow the duty to be paid in instalments of such amounts payable at such times as he may direct.

14. The duty may be assessed on any person for the time being owning or carrying on the business whether as agent for the owner or otherwise or, where the business has ceased during the accounting period, on the person who owned or so carried on the business immediately before the time at which the business ceased, and where there has been a change of ownership of the business during the accounting period, the Collector shall make the assessment in the prescribed manner.

15. The provisions of sections 20, 21, 22, 23, 24, 26, 27, and of Chapters IV and V and of sections 42, 45, 46, 47 and 49 to 52 of the Indian Income-tax Act, 1918, shall apply, with such modifications, if any, as may be prescribed, as if the said provisions referred to excess profits duty instead of to income-tax, and every officer or authority exercising powers under the said provisions may exercise the like powers under this Act in regard to excess profits duty as he or it exercises in regard to income-tax under the said Act :

Provided that references in the said provisions to the assessee shall be construed as references to a person by whom excess profits duty is payable.

16. Notwithstanding anything contained in the Indian Income-tax Act, 1918, or in any Act repealed thereby, all information contained in any statement or return made or furnished under the provisions of any of the said Acts or obtained or collected for the purposes of any such Act may be used for the purposes of this Act.

17. (1) A person shall not for the purposes of avoiding payment of excess profits duty enter into a fictitious or artificial transaction or carry out any fictitious or artificial operation, and if he has entered into any such transaction or carried out any such operation before the commencement of this Act, shall inform the Collector of the nature of the transaction or operation.

Excess Profits **ACT X OF 1919 (EXCESS PROFITS DUTY).** **S. 18**

Explanation.—For the purposes of this section an artificial transaction or operation includes every device of whatever nature adopted for the purposes of presenting the accounts of a business in a misleading form or manner with intent to evade or having the effect of evading any obligation imposed by this Act.

(2) If any person acts in contravention of, or fails, without reasonable cause or excuse, to comply with, the provisions of sub-section (1), he shall on conviction by a Magistrate be punishable with fine which may extend to one thousand rupees.

Power to make rules. **18.** (1) The Governor General in Council may, by notification in the Gazette of India, make rules for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the rate to be allowed in respect of any business or class of business for the purpose of clause (a) of sub-section (1) of section 6 ;
- (b) the procedure to be followed by Boards of Referees appointed under this Act ;
- (c) the basis and method of assessment when there has been a change of ownership during any period which can be selected for the purpose of determining standard profits, or during any subsequent period prior to the commencement of this Act ; and
- (d) the adaptation to excess profits duty of any of the provisions of the Indian Income-tax Act, 1918, which are made applicable to that duty by section 15.

VII of 1918.

(3) All rules made under this section shall have effect as if enacted in this Act.

Excess profits duty and super-tax to be alternately chargeable. **19.** Where the profits of any business in the accounting period are chargeable to excess profits duty under the provisions of this Act and to super-tax under the provisions of the Super-tax Act, 1917, then—

VIII of 1917.

- (1) if the amount chargeable as excess profits duty exceeds that chargeable as super-tax, excess profits duty shall alone be charged, and
- (2) if the amount chargeable as super-tax exceeds that chargeable as excess profits duty, super-tax shall alone be charged,

VIII of 1917, and the provisions of this Act and the Super-tax Act, 1917, shall be construed accordingly.

Excess profits duty an allowance for the purposes of Act VII of 1918. **20.** The amount of excess profits duty paid in respect of any business shall be allowed as a deduction at the adjustment made in the year ending on the 31st March, 1920, in respect of the profits of that business for the purposes of section 19 of the Indian Income-tax Act, 1918 :

VII of 1918.

Sch. II ACT X OF 1919 (EXCESS PROFITS DUTY). **Excess Profits**

Provided that, if the amount of excess profits duty payable has not been ascertained at the time when the said adjustment is made, the amount by which the income-tax would have been reduced if effect had been given to the deduction shall be deducted from the amount payable for excess profits duty.

SCHEDULE I.

EXCEPTED BUSINESSES.

(See section 3.)

1. Any business the income from which is agricultural income.
2. Offices or employments.
3. Any profession the profits of which are dependent mainly on the personal qualifications of the person by whom the profession is carried on, and in which no capital expenditure is required or only capital expenditure of an amount which is small when compared with the profits which the person carrying on the profession makes :

Provided that the business of any person taking commissions in respect of any transactions or services rendered, or any agent of any description (not being a whole-time officer or servant of the business or a commercial traveller, or an agent whose remuneration consists wholly of a fixed and definite sum not dependent on the amount of business done or any other contingency) shall not be included in this exception.

4. Any business which is liable to pay in respect of the accounting period excess profits duty in the United Kingdom.
5. Any business of which the profits in the accounting period do not exceed thirty thousand rupees.

SCHEDULE II.

ASCERTAINMENT OF CAPITAL.

(See section 6.)

1. The amount of the capital of a business shall, so far as it does not consist of money, be taken to be—

- (a) so far as it consists of assets acquired by purchase, the price at which these assets were acquired, subject to any proper deduction for depreciation or for unpaid purchase money,
- (b) so far as it consists of assets being debts due to the business, the nominal amount of those debts subject to any reduction which has been allowed or is allowable in respect of those debts under the Indian Income-tax Act, 1918, and
- (c) so far as it consists of any other assets which have not been acquired by purchase, the value of the assets at the time when they became assets of the business, subject to any proper deduction for depreciation :

VII of 1918.

Provided that nothing in this provision shall prevent accumulated profits (other than those made in the accounting period) employed in the business being treated as capital.

2. Any borrowed money or trade debts shall be deducted in computing the amount of capital for the purposes of this Act.

3. Where any asset has been paid for otherwise than in cash, the cost price of that asset shall be taken to be the value of the consideration at the time the asset was acquired, but where the business has been converted into a company and more than two-thirds of the shares in the company are held by the person who was the owner of the business no value shall be attached to those shares, so far as they are represented by good-will or otherwise than by material assets of the company, unless the Collector in special circumstances otherwise directs. Patents and secret processes shall be deemed to be material assets.

THE EXCISE ACT, 1896.

(ACT XII OF 1896.)

[Passed on the 19th March, 1896.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1871	X	Excise	... Rep., Act XXII of 1881.
1881	XXII	Do.	... Rep., Act XII of 1896.
1890	XIII	Excise (Malt Liquors)	... Rep. in pt., Act XII of 1896.
1893	X	Excise (Amending Act)	... Rep., Act XII of 1896.
1896	XII	Excise	... Rep. in pt., Act XIII of 1898. Am. in pt., Act VII of 1906 Rep. in pt., Act X of 1914.

An Act to amend the law relating to the Excise-revenue in force in Northern India, Burma, and Coorg.

WHEREAS it is expedient to amend the law in force in Northern India, Burma and Coorg relating to the production, sale, possession and import of spirit, fermented liquors and intoxicating drugs, and the collection of the revenue derived therefrom ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Title, local extent and commencement. 1. (1) This Act may be called the Excise Act (a), 1896.

(2) It extends to the territories administered respectively by [1] * the Lieutenant-Governor of the Punjab, and the Chief Commissioners of the Central Provinces, Burma, [2] * * * Coorg, and Ajmere and Merwara ; [3] *

[3] (3) * * *

Leg. Changes :—[1] The words " the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh " were repealed by Act X of 1914. [2] The words " (inclusive of Upper Burma) " were repealed by the Burma Laws Act, 1898. [3] Repealed by Act X of 1914.

Case-law :—(a) Object of the Act is to prohibit sale of excisable articles without license, 81 O. 798 (804) ; and to prevent drunkenness, 16 O. 436 (437).

2. (1) The enactments mentioned in the schedule are repealed to the extent specified in the fourth column thereof.

(2) But all rules made, powers conferred and licenses and farms granted under any of the enactments so repealed and in force at the commencement of this Act shall be deemed to have been respectively made, conferred and granted under this Act.

Definitions.

3. (1) In this Act—

(a) "Chief Revenue-authority" means,—

1] * * *

in the territories respectively administered by the Lieutenant-Governor of the Punjab and the Chief Commissioner of Burma,—the Financial Commissioner; and

in the territories respectively administered by the Chief Commissioners of the Central Provinces, Coorg and Ajmere and Merwara,—the Chief Commissioner:

(b) "Collector" includes any Revenue-officer in independent charge of a district and any officer appointed by the Local Government to discharge, throughout any specified local area, the functions of a Collector under this Act:

(c) "Commissioner of Revenue" means any officer appointed by the Local Government to discharge, throughout any specified local area, the functions of a Commissioner of Revenue under this Act:

(d) "Magistrate" means any Magistrate exercising powers not less than those of a Magistrate of the second class, or any Magistrate of the third class specially authorized in this behalf by the Magistrate of the district:

(e) "import" includes removal into one Province of British India from another:

(f) "place" includes also house, boat and raft:

(g) "tari" means the sap of any kind of palm-tree:

(h) "fermented liquor" means malt liquor, wine, pachwai and fermented tari, and in any provision of this Act, shall, if the Local Government, subject to the control of the Governor General in Council, so directs, include any other fermented liquor, and also tari, though it may not have perceptibly begun to ferment:

(i) "spirit" (a) means any liquor containing alcohol obtained by distillation:

(j) the expression "intoxicating drugs" (b) means ganja, bhang, charas, and every preparation and admixture of the same,

Leg. Changes :—[1] The words "in the territories administered by the Lieutenant-Governor of the North Western Provinces and Chief Commissioner of Oudh,—the Board of Revenue" were repealed by Act X of 1914.

Case-law :—(a) Medicine containing alcohol is not a liquid substance containing alcohol, 1 C.W.N. 1. (b) Chandu—no intoxicating drug, A.W.N. (1884) 213; seast balls—no intoxicating drug, L.B.R. (1872—1892), 571; hemp—no intoxicating drug, U.B.R. (1909) Excise, p. 1.

[1] and includes every other drug which the Local Government may, by notification in the local official Gazette, declare to be included in this definition, and every preparation and admixture of any such drug [1] :

- (k) "hemp" means any variety of the hemp plant from which intoxicating drugs can be produced :
- (l) "tola" means a weight of one hundred and eighty grains Troy :
- (m) "ser" means a weight of eighty tolas :
- (n) the articles next hereinafter mentioned shall be deemed to be sold retail within the meaning of this Act when sold in quantities not exceeding those next hereinafter specified in respect of them, that is to say,—
 - foreign spirit or foreign fermented liquor, two imperial gallons or twelve reputed quart bottles :
 - country spirit, one ser, and in Burma one reputed quart bottle :
 - country fermented liquor, four sers, and in Burma four reputed quart bottles ;
 - hang, or any preparation or admixture thereof, one ser ;
 - ganja or charas, or any preparation or admixture thereof, five tolas.

If sold in larger quantities, they shall be deemed to be sold wholesale.

(2) In any case in which doubt arises, the Local Government may decide (a) what, for the purposes of this Act, shall be deemed to be "country spirit," "country fermented liquor," "foreign spirit," and "foreign fermented liquor;" and such decision shall be binding on the Courts.

4. Nothing herein contained shall affect Act XVI of 1863 (*to make special provision for the levy of the Excise-duty payable on Spirits used exclusively in Arts and Manufactures or in Chemistry*) or the Cantonments Act, 1889.

Saving of Act XVI
of 1863 and XIII of
1889.

XIII of 1889.

CHAPTER II.

PRODUCTION OF SPIRIT AND FERMENTED LIQUOR.

5. No person (b) shall construct, work or possess a distillery, still or brewery, or manufacture fermented liquor, in any district except under a license (c) granted by the Collector or by a person authorized by the Collector to grant such license, and in accordance with the conditions (if any) contained therein.

Manufacture of
spirit and liquor
without license pro-
hibited.

Leg. Changes :—[1] These words were added by Act VII of 1906, S. 2.

Case-law :—(a) Guiding rule to find whether a spirit is country or foreign, U.B.R. (1892—1896) Excise, p. 87. (b) Civil Court attaching properties mentioned in the section not a 'person,' 11 N.L.R. 67=29 Ind. Cas. 339. (c) Licensee sub-letting his license, illegal, A.W.N. (1888) 215=10 A. 577; licensee letting the shop or use of license, illegal, 21 W.R. 289.

Power to establish distilleries for country spirit.

6. The Collector may, with the previous sanction of the Chief Revenue-authority, from time to time—

- (a) establish at any place within his district a distillery in which country spirit may be made, and discontinue any distillery so established ; and
- (b) fix limits within his district within which no such spirit, unless made in the said distillery, shall be introduced without a pass from him.

7. No spirit shall be removed from any distillery licensed under section 5 or established under section 6
Duty on spirit. until—

- (a) such duty as the Local Government may from time to time fix in respect of such spirit has been paid, or
- (b) a bond for such duty has been executed, or
- (c) duty in respect of the materials used in making such spirit has been levied at such rates and in such manner as the Local Government, with the previous sanction of the Governor General in Council, may from time to time direct.

Explanation.—Duty may be fixed or made payable under this section at different rates according to the places to which any spirit is to be removed for consumption.

Duty on fermented liquor.

8. No fermented liquor shall be removed from a brewery licensed under section 5 until—

- (a) duty has been paid thereon at the rate for the time being leviable under the Indian Tariff Act, 1894, on like liquor VIII of 1894. imported by sea into any part of British India except Aden and Perim, or at such lower rate as the Local Government, having regard to the circumstances of the brewery or of the local area in which the brewery is situate, may from time to time prescribe, or
- (b) a bond for such duty has been executed.

Power for Chief Revenue - authority to make rules as to distilleries and breweries licensed under section 5.

9. The Chief Revenue-authority may, from time to time, make rules as to—

- (a) the granting of licenses for distilleries, stills and breweries under section 5 ;
- (b) the notices to be given by the proprietor of a licensed distillery or licensed brewery when he commences and discontinues work ;
- (c) the size and description of the stills in such distillery ;
- (d) the storing and passing out of the spirit made in such distillery, or of the fermented liquor made in such brewery, and the contents of the passes ;

- (e) the inspection and examination of such distillery or brewery, and the warehouses connected therewith, and of the spirit or fermented liquor made and stored therein ;
- (f) the furnishing of statements of the spirit and the stills, coppers, casks and other utensils in such distillery, or of the fermented liquor and the mashtuns, underbacks, wort-receivers, coppers, heating tanks, coolers and collecting, fermenting and other vessels, in such brewery.

Power for Chief Revenue - authority to make rules for distilleries established under section 6.

10. The Chief Revenue-authority may, from time to time, make rules as to—

- (a) the management of distilleries established under section 6, and, in particular, the conditions on which any materials to be used in making spirit may be brought into such distillery ;
- (b) the conditions on which spirit may be made in such distilleries : and
- (c) the storing and passing out of the spirit so made and the contents of the passes.

11. Except in the territories respectively administered by the Chief Commissioners of the Central Provinces, Coorg and Ajmere and Merwara, the sanction of the Local Government is required to validate rules under sections 9 and 10.

Sanction to rules under sections 9 and 10.

CHAPTER III.

CULTIVATION AND CONTROL OF INTOXICATING DRUGS.

Prohibition, restriction and regulation of cultivation of hemp and production of intoxicating drugs.

12. (1) In Burma, the cultivation of hemp and the preparation of intoxicating drugs (a) are prohibited except under, and in accordance with, a license granted by such officer as the Local Government may from time to time appoint in this behalf.

(2) In the other territories to which this Act extends, the Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the official Gazette, in respect of the whole or any part of the territories administered by it,—

- (a) prohibit, absolutely or except under, and subject to the conditions of, a license granted by such officer as the Local Government may from time to time appoint in this behalf, the cultivation of the hemp plant and the production or preparation of intoxicating drugs from the hemp plant so cultivated, and place the cultivation of the hemp plant and the production or preparation and storage of such intoxicating drugs as aforesaid under such supervision as may be deemed necessary to secure payment of the duty (if any) imposed under this Act ;

Case-law :—(a) Preparation of chandu, not prohibited, A.W.N. (1884) 213.

- (b) restrict and regulate, in such manner as may by rule be prescribed, the collection by any person of the spontaneous growth of the hemp plant and the preparation of intoxicating drugs from the spontaneous growth so collected; and
- (c) prohibit, absolutely or otherwise than by certain specified routes and under specified conditions, the import and transport of intoxicating drugs;

and may, in like manner, cancel or vary any such notification.

13. The Local Government, with the previous sanction of the Governor General in Council may from time to time, by notification in the official Gazette, in respect of the whole or any part of the territories administered by it,—

Duty on cultivation of hemp and intoxicating drugs.

- (a) impose such duty, not exceeding two hundred rupees per acre, as it may think fit, on the cultivation of hemp; or
- (b) impose such duty, not exceeding twenty rupees per ser, as it may think fit, on intoxicating drugs produced or prepared in, or imported into, or exported from, or transported from place to place within, any of the territories to which this Act extends, or any part thereof:

and may, in like manner, alter or abolish any duty imposed under this section.

Establishment and licensing of bonded and other warehouses and levy of duty on intoxicating drugs on issue therefrom.

14. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time,—

- (a) establish or license bonded or other warehouses for the storage of intoxicating drugs, and
- (b) direct that, subject to such conditions (if any) as it may, from time to time, impose, the levy of the duty (if any) payable under section 13 on intoxicating drugs in transit to or from, or stored in, such warehouses shall be postponed until such time as may by rule be fixed in this behalf.

15. (1) If intoxicating drugs be lodged in a warehouse established under the last foregoing section, the owner shall pay monthly, on receiving a bill or written demand for the same from the Collector or other officer deputed by the Collector in this behalf, warehouse-dues at such rates as the Chief Revenue-authority may fix.

Payment of warehouse dues.

(2) If any bill for warehouse-dues presented under this section is not discharged within ten days from the date of presentation, the Collector may, in discharge of such demand (any transfer or assignment of the drugs notwithstanding), cause to be sold, in such manner as he may think fit, such sufficient portion of the drugs as he may select.

(3) Out of the proceeds of such sale the Collector shall satisfy, first, the duty payable in respect of the drugs sold and, next, the demand in

respect of which the drugs were sold, and shall then pay the surplus (if any) to the owner of the drugs on his application :

Provided that, if the drugs fail to produce a sum sufficient to satisfy the said duty and demand, the same shall not be sold, but shall be destroyed by, or by order of, the Collector :

Provided also that the application for such surplus (if any) as aforesaid be made within one year from the date of the sale of the drugs, or that sufficient cause be shown for not making it within such period.

16. Any intoxicating drugs warehoused under this Act may be left in the warehouse in which they are deposited, or in any warehouse to which they may in manner hereinafter provided be removed, till the expiry of two years from the date on which they were so deposited. The owner of any drugs remaining in a warehouse on the expiry of such period shall forthwith clear the same :

Period during which intoxicating drugs may remain warehoused.

Provided that, when the license for a warehouse licensed under this Act is cancelled and the Collector gives notice of such cancellation to the owner of any drugs deposited in such warehouse, such owner shall, within seven days from the date on which such notice is given, remove such drugs to another warehouse or clear them.

17. (1) Any owner of intoxicating drugs warehoused under this Act may, at any time within two years from the date on which the drugs were so warehoused, with the permission of the Collector and on such conditions and after giving such security (if any) as the Collector may direct, remove the drugs from one warehouse to another, whether established or licensed by the same or another Local Government, and whether under this Act or under any other enactment for the time being in force.

Power to remove intoxicating drugs from one warehouse to another.

18. (1) In Burma no person shall have in his possession any intoxicating drugs (a) except under, and in accordance with the terms of, a general exemption granted by the Local Government, or a license granted by such officer as the Local Government may, from time to time, appoint in this behalf.

Possession of intoxicating drugs.

[1] (2) In the other territories to which this Act extends, no person shall have in his possession—

(a) any drugs which the Local Government has, by notification under section 3, sub-section (1), clause (j), declared to be

Leg. Changes:—[1] This sub-section was substituted by Act VII of 1906, S. 3. The original sub-section was as follows :—

“(2) In the other territories to which this Act extends, no person shall have in his possession any larger quantity of any intoxicating drugs than that specified in section 3, sub-section (1), clause (n), in respect of such drugs, unless he is permitted to collect, cultivate, manufacture or sell the same, or holds a pass therefor from the Collector or some other officer empowered by the Local Government to grant such passes.”

Case-law:—(a) ‘Majun’ or sweetmeat prepared with Indian hemp is not an intoxicating drug, 4 Ind. Cas. 898 = U.B.R. (1907—1909) III, Excise, p. 1 = 11 Cr. L.J. 77.

included in the definition of "intoxicating drugs," except under, and in accordance with the terms of, a general exemption granted by the Local Government, or a license granted by such officer as the Local Government may, from time to time, appoint in this behalf, or

- (b) any quantity of any intoxicating drugs mentioned in section 3, sub-section (1), clause (n), greater than the amount therein specified in respect of such drugs, unless he is permitted to collect, cultivate, manufacture or sell the same, or holds a pass therefor from the Collector or some other officer empowered by the Local Government to grant such passes.]

Power for Local Government to make rules.

19. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

- (a) to regulate the time, place and manner of payment of the duties (if any) imposed under section 13,
 (b) to carry into effect the provisions of section 12, section 14 and section 18 or any of them, and
 (c) generally, to carry into effect the provisions of this Chapter.

Power for Collector or other authorized officer to grant licenses and passes for the possession or transport of intoxicating drugs and for Chief Revenue-authority to make rules.

20. The Collector or any other officer empowered by the Local Government in this behalf may, from time to time, grant licenses or passes to persons desirous of possessing or transporting intoxicating drugs, and the Chief Revenue-authority, with the previous sanction of the Local Government, may make rules to regulate the grant of such licenses or passes.

CHAPTER IV.

SALE OF SPIRIT, FERMENTED LIQUOR AND INTOXICATING DRUGS.

Spirit, fermented liquor and intoxicating drugs not to be sold without license.

21. (a) No spirit, fermented liquor or intoxicating drug shall be sold (b) except under, and in accordance with the terms of, a license granted under the provisions hereinafter contained :

Provided as follows :—

- (a) nothing in this section applies to the sale of any foreign spirit or foreign fermented liquor legally procured by any person for his private use and sold by him or by auction on his behalf or on behalf of his representatives in interest upon his quitting a station or after his decease :

Case-law :—(a) Scope of section, U.B.R. (1897—1901) Vol. I (Cr.) p. 189 (191). (b) Does not mean a 'sale-in-bond' or sales of *charas*-in-bond in the hands of Excise authorities to an unlicensed person who cannot take delivery, 4 P.R. 1911, Cr.=10 Ind. Cas. 682 ; sale of non-fermented tari, not prohibited, A.W.N. (1883) 238 ; sale by servant of a license holder, not punishable, A.W.N. (1894) 201 ; selling under agreement from licensee illegal, 31 C. 798 ; transaction made for no profit, not sale, 6 A.L.J. 238=31 A. 293=9 Cr. L.J. 503=2 Ind. Cas. 192.

- (b) any officer empowered in this behalf by the Chief Revenue-authority may grant to travelling merchants, subject to such rules and restrictions as such authority may from time to time prescribe, a general license authorizing them to sell foreign spirit and foreign fermented liquor wholesale in any district which they may visit in the course of their travels, without taking out a fresh license for that district ;
- (c) any person making or producing country spirit or country fermented liquor, in accordance with the provisions of this Act, may, subject to any rules from time to time made by the Local Government in this behalf, sell such spirit or liquor to any person licensed under this Act as a retail vendor of such spirit or liquor ;
- (d) any person authorized to cultivate the hemp plant may sell any intoxicating drug prepared from his plants to any person to whom he is permitted by the conditions of his license to sell the same, or to any person authorized to purchase the same by the order in writing of the Collector :

[1] Provided also that, where the Local Government has declared, by notification under section 3, sub-section (1), clause (j), any drug to be included in the definition of "intoxicating drugs," such drug may be sold in the territories to which this Act extends under, and in accordance with the terms of, a general exemption granted by the Local Government.

22. (1) Subject to the rules made by the Chief Revenue-authority under the powers conferred by this Act, the Collector may grant licenses (a) for the sale of foreign spirit and foreign fermented liquor, wholesale or retail, and for the retail sale of country spirit or country fermented liquor, and (except in Burma) of intoxicating drugs, within his district or any part thereof or at any place therein.

(2) Licenses for the sale of country spirit and country fermented liquor and intoxicating drugs, wholesale, and licenses for the sale, in Burma, of intoxicating drugs, retail, shall be granted only by such officer as the Local Government from time to time appoints in this behalf.

(3) Any license granted under this section may be cancelled by the Collector for any cause specified therein.

23. (1) Whenever the Collector considers that the license of a vendor of country spirit, country fermented liquor or intoxicating drugs should be cancelled for any cause other than those specified in such license, he shall remit a sum equal to the amount of the license-fee for fifteen days, and shall either give fifteen days' previous notice of his intention to cancel the license, or shall, in addition to remitting such sum as aforesaid, make such compensation for default of notice as the Commissioner of Revenue or the Chief Revenue-authority directs.

Leg. Changes:—[1] This proviso was added by the Excise (Amendment) Act, 1906 (VII of 1906), S. 4.

Case-law:—(a) Not heritable, 22 A. 441 ; not transferable, 31 C. 798.

(2) On the expiration of such notice or the payment of such additional compensation, the Collector may cancel the said license.

24. (1) Any retail vendor licensed under this Act may surrender his license on the expiration of one month's previous notice given by him to the Collector of his intention to surrender the same and on payment of such sum, not exceeding the amount of the license-fee for six months, as the Collector may fix in this behalf.

(2) If the Collector is satisfied that there is sufficient reason for surrendering a license, he may remit the sum so fixed.

Power for Collector to farm fees and for farmer to grant licenses.

25. (1) The Collector, with the sanction of the Chief Revenue-authority, may let in farm—

- (a) the fees leviable in any district or part of a district on licenses for the retail sale of any description of country spirit or country fermented liquor or (except in Burma) of intoxicating drugs ;
- (b) the right to manufacture, in any district or part of a district in which no distillery is established under section 6, country spirit or country fermented liquor.

(2) When the fees so leviable or the right to manufacture such spirit or liquor, or both, are or is let in farm, the farmer may, subject to such reservations or restrictions as the Collector, with the sanction of the Chief Revenue-authority, may from time to time make or impose, grant licenses for the retail sale, or for the manufacture, or for both, as the case may be, of such articles within the local limits of his farm, and shall file in the Collector's office a list of all the licenses granted by him in such form and on such day or days in each year as the Chief Revenue-authority may, from time to time, prescribe in this behalf.

Farm may be cancelled.

26. The Collector, with the sanction of the Chief Revenue-authority, may cancel any farm granted under this Act.

27. If any such farm be cancelled for any cause other than a breach on the part of the farmer of the conditions of the farm, or if any reservation or restriction with respect to the grant of licenses be made or imposed within the term of the farm, the farmer^(a) shall be entitled to receive for any loss which he sustains thereby such compensation as the Chief Revenue-authority may determine.

Compensation to farmers in certain cases.

28. Every farmer under this Act may use the same means and processes for the recovery of any arrear of fees due to him from any retail vendor as may be lawfully used by the local landholders for the recovery of arrears of rent due to them from their tenants.

Recovery of arrears by farmers.

Case-law:—(a) Has no remedy by way of suit for damages in a Civil Court, 18 Ind. Cas. 566=15 O.C. 117.

Power for Chief Revenue - authority to regulate supply of tari to licensed vendors.

29. The Chief Revenue-authority may, from time to time, make rules to regulate the mode in which tari shall be supplied to licensed vendors of the same.

CHAPTER V.

POSSESSION AND IMPORT OF SPIRIT AND FERMENTED LIQUOR.

30. (1) No person shall have in his possession any quantity (a) of any spirit or fermented liquor larger than that specified in section 3, sub-section (1), clause (n), in respect of such spirit or liquor, unless he is permitted to manufacture or sell the same, or he holds a pass therefor from the Collector or from some other officer empowered by the Local Government to grant such passes.

(2) Nothing in this section extends to—

(a) any foreign spirit or foreign fermented liquor in the possession of any common carrier or warehouseman as such, or purchased by any person for his private use (b) and not for sale, or

(b) tari intended to be used for the manufacture of gur or molasses.

31. (1) A person shall not bring into any territory to which this Act extends any spirit manufactured at any place in India beyond the limits of British India, until he has obtained a pass therefor from such officer as the Local Government from time to time appoints in this behalf, and has paid in respect thereof,—

(a) if the Local Government has fixed a duty under clause (a) of section 7 for like spirit manufactured in the part of the territory into which the spirit is to be brought, that duty, or,

(b) if the Local Government has not fixed a duty under that clause for like spirit manufactured in that part, a duty at such rate as the Local Government from time to time prescribes in this behalf, not exceeding the highest rate leviable, under the law for the time being in force, on spirit imported into British India by sea.

(2) The provisions of sub-section (1) with respect to spirit shall apply to fermented liquor also, with this modification, that the duty to be paid in respect of the liquor shall be the duty leviable on like liquor VIII of 1894, under the Indian Tariff Act, 1894, or such lower duty as the Local

Case-law :—(a) Quantity, possession of which legal, U.B.R. (1892—96) Excise, p. 87; see, also, 36 P.R. 1866; knowledge of illegal possession necessary for conviction, cf. 3 A. 404 (407); possession of foreign spirits for private use, no offence, U. B. R. (1892—96) Vol. I, 97; 4 Bur. L.T. 146—12 Ind. Cas. 845. (b) Burden of proof for plea of 'private use,' 5 L.B.R. p. 52, F.B.—2 Ind. Cas. 543; U.B. R. (1909) Excise, p. 7; presumption as to spirit is that it is country spirit, U.B.R. (1892—96) Excise, pp. 87—90.

Government, having regard to the rate or rates of duty for the time being leviable under clause (a) of section 8, may from time to time prescribe.

(3) If any question arises as to the duty to be charged on any spirit or fermented liquor under this section, the decision of the Local Government thereon shall be final.

32. (1) The Governor General in Council may, from time to time, by notification in the Gazette of India, impose such duty as he thinks fit on any spirit or fermented liquor brought by land from beyond the limits of India into any territory to which this Act extends or into any specified part thereof, and may alter or abolish any duty so imposed.

(2) When any duty is imposed under this section, the Governor General in Council may by rule prescribe the time, place and manner of payment of the same.

CHAPTER VI.

OFFICERS AND THEIR POWERS.

33. The Collector may appoint persons, by name or by virtue of their office, to be officers for the collection of the excise-revenue and for the prevention of offences against this Act, and the officers so appointed shall, in addition to their ordinary designations (if any), be styled Excise-officers.

34. The Collector may recover any amount due to the Government under this Act or the rules made hereunder, by distress and sale of the moveable property of the person from whom such amount is due or of his surety, or by any other process (a) for the time being in force for the recovery of arrears of land revenue due from landholders or from farmers of land or their sureties.

35. Any Excise-officer may enter and inspect at any time by day or by night the shop or premises in which any manufacturer or vendor licensed under this Act carries on the manufacture of country spirit, or the sale of country spirit, country fermented liquor or intoxicating drugs.

36. Any Excise-officer may stop and detain any person carrying any spirit, fermented liquor or intoxicating drug liable to confiscation under this Act, and may seize such spirit, liquor or drug, together with any vessels, packages or coverings in which it is contained, and any animals and conveyances used in carrying it, and may also arrest the person in whose possession such spirit, liquor or drug is found.

Case-law :—(a) By sale of land, legal, 3 O.O. 79.

37. Any Excise-officer in the receipt of a monthly salary of not less than ten rupees, or who receives an annual remuneration equivalent to such salary, may arrest any person having in his possession any article liable to confiscation under this Act or engaged in the unlawful sale of any spirit, fermented liquor or intoxicating drug, and may seize such article, spirit, liquor or drug.

Power of Excise-officers to arrest persons in possession of article liable to confiscation and to seize article.

38. Whenever any Excise-officer in receipt of such² monthly salary or annual remuneration as aforesaid has reason to believe, from information given by any person (which information shall be taken down in writing), that in any place spirit is unlawfully manufactured, or any article liable to confiscation under this Act is kept or concealed, such officer may (a), after sunrise and before sunset (but always in the presence of an officer of Police in the receipt of a monthly salary of not less than ten rupees, unless the Excise-officer is himself such an officer of Police) (b), enter into such place and in case of resistance may break open any door and force and remove any other obstacle to such entry, and may seize and carry away such spirit or article, and may also arrest the occupier of the place, with all other persons concerned in the manufacture of such spirit or in the keeping and concealing of such article.

Power of Excise-officer to search on information of illicit manufacture or possession.

39. The Collector may issue his warrant for the arrest of any person whom he has reason to believe, either from information in writing or from the proceedings in any other case under this Act or any other law, to be engaged in the unlawful sale of spirit or fermented liquor or intoxicating drugs, or to have in his possession any article liable to confiscation under this Act.

Collector may issue warrant of arrest in certain cases.

40. (1) The Collector may issue his warrant for the search of any place in which he has reason to believe, either from information in writing or from the proceedings in any other case under this Act or any other law, that spirit is unlawfully manufactured, or that any spirit, fermented liquor or intoxicating drug liable to confiscation under this Act is kept or concealed.

Collector may issue search-warrant.

(2) Such warrant may be executed by any Excise-officer in the receipt of a monthly salary of not less than ten rupees at the time and in the manner prescribed in section 38.

(3) Whenever the Collector thinks that the search should be made after sunset and before sunrise on any particular day, he shall issue a warrant specially authorizing the search to be so made. Such warrant may be executed by any Excise-officer as aforesaid in the manner prescribed in section 38, and shall cease to be in force at sunrise on the day next following.

Case-law :—(a) Searches to be conducted according to the provisions of this Act and not Cr. P. C., 4 L. B. R. 121. (b) Object of this proviso is safe-guard. 4 C. W. N. 245.

41. Whenever (a) an Excise-officer (b) arrests any person, or seizes

Excise-officer to report arrest, etc., and to take person arrested to Magistrate.

any article liable to confiscation under this Act, or enters any place for the purpose of searching for any such article, he shall, within twenty-four hours thereafter, make a full report of all the particulars of such arrest, seizure or search to his official superior, and, unless acting under the warrant of the Collector,

shall take the person arrested or the article seized with all convenient despatch to the Magistrate for trial or adjudication.

42. Whenever any person is arrested or any article is seized under the warrant of a Collector issued under this Act, the

Procedure after arrest or seizure.

officer making such arrest or seizure shall, within twenty-four hours thereafter, take the person arrested

or the article seized to the Collector, and the Collector, after such enquiry as he thinks necessary, shall send such person or article to the nearest Magistrate, or shall order the immediate discharge of such person or the release of such article.

Police to aid Excise-officers.

43. All Police-officers are required to aid the Excise-officers in the due execution of this Act, upon request made by such Excise-officers.

Power for Local Government to invest Police-officers with powers of Excise-officers.

44. (1) The Local Government may, from time to time, invest either by name or in virtue of his office—

(a) any Police-officer with the powers conferred on Excise-officers by section 36 of this Act ;

(b) any Police-officer in charge of a station or any Police-officer of or above the grade of head-constable or sergeant with the powers conferred on Excise-officers by sections 37 and 38 of this Act.

(2) Every officer so invested shall, for all purposes connected with the exercise of these powers, be deemed to be an Excise-officer (c) within the meaning of this Act.

CHAPTER VII.

PENALTIES.

45. (1) Whoever (d) in contravention of section 5 constructs, works

For illegally manufacturing spirit or liquor.

or possesses a distillery, still or brewery, or makes fermented liquor (e), shall be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both. (f)

Case-law :—(a) S. 41 should be read in harmony with S. 57, 20 A. 70 (72). (b) Excise-officer not debarred from trying a case, A. W. N. (1908) 95=5 A. L. J. 357=7 Cr. L. J. 393. (c) *E.g.*, a Sub-Inspector of police, 23 Ind. Cas. 688=2 P.R. 1914, Cr., but not competent to make report of offence under S. 49 or S. 52, 13 P. R. 1910, Cr.=6 Ind. Cas. 717. (d) The general purport of this and the following sections, 10 A. 577; see, also, 16 C. 436; Civil Court attaching property covered by the Act not acting illegally, 11 N.L.R. 67. (e) Tapping one's own toddy tree, no offence, L.B.R. (1900—1902), Vol. I, 214; tapping tari, not manufacturing tari, U.B.R. (1905) Excise, 3=2 Cr. L.J. 470; nor possessing *seindat* with a view to prepare *seinye* a country fermented liquor, an offence, 20 Ind. Cas. 745=6 Bur. L.T. 140. (f) Imprisonment in default of fine, illegal, U.B.R. (1892—1896), Vol. I, p. 93; conviction in separable or inseparable offences, L.B.R. (1900—1902), Vol. I, p. 33; U.B.R. (1892—1896), Vol. I, p. 93.

(2) All spirit and liquor made in contravention of section 5, and all materials and implements collected for the purpose of such manufacture, shall be liable to confiscation (a).

46. (1) Any person who—

For illegally introducing country spirit.

(a) without a special pass from the Collector introduces, into the limits fixed for the consumption of spirit made at a distillery established under section 6, any country spirit manufactured at another place, or

For illegally removing spirit or fermented liquor.

(b) in contravention of section 7 or section 8 or of any rule made under section 9 or section 10, removes any spirit from a distillery or any fermented liquor from a brewery, or

For illegally importing spirit or fermented liquor.

(c) in contravention of section 31, brings any spirit or fermented liquor into any territory to which this Act extends, or

For importing spirit, fermented liquor or intoxicating drug without paying duty.

(d) without payment of such duty (if any) as may for the time being be payable in pursuance of a notification under section 32, brings any spirit or fermented liquor into any territory to which this Act extends,

shall be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both.

(2) All such spirit or fermented liquor, together with the vessels containing the same, and any animals and conveyances (b) used in carrying it, shall be liable to confiscation.

For contravening rules prescribed by Chief Revenue authority.

47. Any person who, except in cases herein otherwise provided for, wilfully contravenes any rule made under section 9 or section 10 shall be punished with fine not exceeding one hundred rupees.

For illegally cultivating hemp or collecting the spontaneous growth of hemp, or preparing, possessing, importing, exporting or transporting intoxicating drugs.

48. (1) Any person who, in contravention of any provision of Chapter III or any rule thereunder, or without payment of such duty (if any) as may for the time being be payable in pursuance of a notification under section 13,—

(a) cultivates hemp, or

(b) collects the spontaneous growth of the hemp plant, or

(c) prepares any intoxicating drug, or

(d) possesses (c) any intoxicating drug, or

(e) imports, exports or transports any intoxicating drug,

Case-law:—(a) Confiscation, not part of the sentence, L.B.R. (1900—1902), Vol. I, p. 8. (b) Boat and steamers not to be confiscated, 12 C.W.N. 189. (c) i.e., with knowledge, U.B.R. (1907—1909), III Excise, p. 1=4 Ind. Cas. 898=11 Or. L.J. 77; as to presumption of guilty knowledge, see 6 Bur. L.T. 129=20 Ind. Cas. 600 (importing cocoanut).

shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(2) Any intoxicating drug in respect of which an offence has been committed under this section, together with the vessels containing the same and any animals and conveyances used in carrying it, shall be liable to confiscation.

49. Any person (a) who, in contravention of section 21, sells (b) any spirit, fermented liquor or intoxicating drug, shall be punished (c) with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both.

For illicitly selling spirit, etc.
50. Any person licensed (d) to sell retail spirit, or fermented liquor, or intoxicating drugs, who permits drunkenness, riot or gaming in his shop, or permits persons of notoriously bad character to meet or remain therein, or receives any wearing-apparel or other effects in barter for spirit, fermented liquor or intoxicating drugs, shall be punished with fine which may extend to two hundred rupees.

For permitting drunkenness, etc., in shop.
51. Any person who possesses (e) any spirit or liquor in contravention of section 30, shall be punished (f) with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and the spirit or liquor, together with any vessels, packages and coverings in which it is contained, and any animals and conveyances (g) used in carrying it, shall be liable to confiscation.

For refusing to produce license and for breach of rules and conditions.
52. Any person holding (h) a license under this Act and refusing to produce the same on the demand of any Excise-officer (i) and any person who breaks any rule under this Act, or any condition (j) of a license granted under this Act for the breach of which rule or condition no other penalty is hereby provided, shall be punished with fine which may extend to fifty rupees.

Case-law :—(a) A medical practitioner mixing brandy in one of the medicines does not commit an offence, 33 P.R. 1914, Cr. = 27 Ind. Cas. 664. (b) Does not include 'sale in bond' or sale of charas-in-bond in the hands of excise authorities to person having no license who can't get delivery, 10 Ind. Cas. 682=4 P.R. 1911, Cr. (c) Award of imprisonment in default of payment of fine, legal, 6 P.R. 1872, Cr. (d) Licensee responsible for default of servant, 18 Cr. L.J. 865=41 Ind. Cas. 977 (F.B.); 9 L.B.R. 81=10 Bur. L.T. 262. (e) Joint possession by several persons of larger quantity, offence, L.B.R. (1893-1900), p. 405; 8 L.B.R. 464=17 Cr. L.J. 476=36 Ind. Cas. 156; master not liable, L.B.R. (1872-1892), p. 373; possession by accused must be proved beyond doubt, 22 Ind. Cas. 752=98 P.L.R. 1914=43 P.W.R. 1913, Cr.; a licensee may possess up to the amount specified in license, not more, 21 P.R. 1910, Cr.=7 Ind. Cas. 491=155 P.L.R. 1910; see 8 Bur. L.T. 246=32 Ind. Cas. 654=8 L.B.R. 217=17 Cr. L.J. 62. (f) Knowledge of possession to be proved, U.B.R. (1909) Excise, p. 1. (g) Vessel or conveyance, meaning of, L.B.R. (1893-1900), p. 633. (h) Only licensee punishable, U.B.R. (1892-1896), Vol. I, p. 109. (i) But not a police officer invested with powers under S. 44, 13 P.R. 1910, Cr.=6 Ind. Cas. 717. (j) Breach of any condition punishable, 1 A. 630; admitting stranger into partnership, not illegal, 11 C.P.L.R. 62 (Civ.); selling liquor to a Burman in Upper Burma, illegal, U.B.R. (1897-1901), Vol. I (Cr.), p. 187; breach of condition by servant, without master's knowledge, master not liable, servant liable, L.B.R. (1872-1892), p. 373; U.B.R. (1892-1896), Vol. I, p. 109.

53. (1) Any owner or occupier of land, and any agent of any such owner or occupier, who authorizes or connives at the illegal manufacture of spirit or the sale of spirit or fermented liquor or intoxicating drugs shall for every such offence be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both.

(2) Any person invested with local jurisdiction who authorizes or connives at the illegal sale of any spirit, fermented liquor or intoxicating drug within the local limits of such jurisdiction shall be punished with fine which may extend to five hundred rupees.

54. Any Police-officer who, without lawful excuse, neglects or refuses to aid an Excise-officer as required by section 43, and any officer in charge of a police-station who, on application made by an Excise-officer desiring to act under section 38, fails to attend a search himself, or to depute a subordinate officer of the required rank, shall be punished with fine which may extend to five hundred rupees.

For vexatious search or seizure.

55. Any Excise-officer who,—

- (a) without reasonable grounds of suspicion searches, or causes to be searched, any place, or
- (b) vexatiously and unnecessarily seizes the moveable property of any person on the pretence of seizing or searching for any article liable to confiscation under this Act, or
- (c) vexatiously and unnecessarily arrests any person, or
- (d) commits any other excess not required for the execution of his duty,

shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees or with both.

56. Any Excise-officer who, in contravention of section 41 or section 42, neglects to report the particulars of an arrest, seizure or search, or delays taking to the Magistrate or Collector, as the case may be, any person arrested or any article seized under this Act, shall be punished with fine which may extend to two hundred rupees.

57. A Court shall not take cognizance (a) of an offence punishable under any one of the following sections, namely, 45, 46, 47, 48, 49, 51, 52 and 53, except on the complaint or report of the Collector or an Excise-officer(b); and a Court shall not take cognizance of any offence punishable under this

Case law :—(a) Proceedings not in accordance with section, void, U.B.R. (1892—1896), Vol. I, p. 111. (b) Head constable is Excise-officer, 30 A. 377=5 A.L.J. 444=8 Cr. L.J. 5=A.W.N. (1908) 157; Assistant Superintendent of Police, Excise-officer, U.B.R. (1897—1901) Vol. I, p. 182, Cr.; Excise-officer who instituted proceedings, cannot try, A.W.N. (1896) 105; *contra* A.W.N. (1897) 162.

Act unless the prosecution is instituted before the expiry of six months next after the commission of such offence.

58. Every person imprisoned for an offence under section 47 or section 52 shall be confined in the civil jail, and every person imprisoned for an offence under any other section shall be confined in the criminal jail.

Confinement in what jail.

59. Whoever attempts to commit any offence punishable under this Act or abets^(a), within the meaning of the Indian Penal Code, the commission of any such offence shall be punished with the punishment provided for such offence.

Attempts and abetment.

XLV of 1860.

60. Any Magistrate before whom any person is convicted of any offence under sections 45, 46, 47, 48, 49, 51 or 53, may award to any person who has contributed in any way to such conviction the whole or any portion of any fine imposed upon the offender and paid by him or realized from his property.

Disposal of fines, etc., as rewards.

61. Any article liable to confiscation under this Act may, on the application of an Excise-officer, be confiscated by the order of any Magistrate within the local limits of whose jurisdiction it is found.

Magistrate to pass order of confiscation.

CHAPTER VIII.

MILITARY CANTONMENTS.

62. Within the limits of any military cantonment, and within such distance from those limits as the Local Government in any case prescribes, no licenses for the manufacture of spirit, or for the sale of spirit or fermented liquor, shall be granted, nor shall the fees leviable on licenses for the retail sale of such spirit or liquor, or the right to manufacture such spirit or liquor, be let in farm, unless with the knowledge and consent of the Commanding Officer; and upon his requisition any such license which has been granted, either by the Collector or by a farmer, within such distance or limits shall be immediately cancelled.

Manufacture and sale of spirits, etc., in military cantonments.

*Application of Act to military cantonments.

63. In all other respects the provisions of this Act shall have effect within such limits or distance.

CHAPTER IX.

MISCELLANEOUS.

64. (1) The Collector shall in all proceedings under this Act be subject to the control of the Commissioner of Revenue, and all orders passed by a Collector under this Act shall be appealable to such Commissioner in manner provided by the rules for the time being in force relating to appeals from the orders of Collectors.

Collector subject to control of Commissioner.

Case-law:—(a) Instigating illegal sale of liquor, punishable, L.B.R. (1872—1892), p. 146.

(2) The Chief Revenue-authority may revise any order passed by a Collector under this Act or by a Commissioner under this section.

Additional power
for Chief Revenue-
authority to make
rules.

65. The Chief Revenue-authority may, from time to time, make rules consistent with this Act—

- (a) as to the period for which any license or farm under this Act shall be granted ;
- (b) as to the fee payable for any such license or farm, and the time or times at which it shall be payable ;
- (c) as to the security to be given by any licensee or farmer under this Act ;
- (d) as to the form of any license or farming lease and of the counterpart thereof (if any) to be taken from such licensee or farmer, and the conditions which may be inserted therein ;
- (e) as to the disposal of things confiscated under this Act ;
- (f) as to the duties of Excise-officers : and
- (g) to provide generally for carrying out the provisions of this Act.

66. The Local Government may, from time to time, by notification in the official Gazette, exempt within any specified local area any specified articles or any specified class of persons from all or any of the provisions of this Act, and may, by like notification, cancel any such exemption.

Power for Local
Government to
exempt articles and
persons.

THE SCHEDULE.

(See section 2.)

Year.	No.	Title or subject.	Extent of repeal.
1881	XXII	The Excise Act, 1881. ...	The whole.
1885	VI	Amending the Excise Act, 1881...	Ditto.
"	IX	Amending the Excise Act, 1881, and other Acts.	So much as relates to the Excise Act, 1881.
1887	II	Ditto ...	Ditto.
1888	XVIII	Financial Commissioner, Burma.	So much of section 7 and the schedule as relates to the Excise Act, 1881.
1889	XIII	The Cantonments Act, 1889 ...	So much of section 2 and the schedule as relates to the Excise Act, 1881.
1890	XIII	Amending the Excise Act, 1881, and other Acts.	Sections 2 to 5 (both inclusive).
"	XX	The North-Western Provinces and Oudh Act, 1890.	Section 43.
1891	XII	The Repealing and Amending Act, 1891.	So much as relates to the Excise Act, 1881.
1893	X	Amending the Excise Act, 1881.	The whole.

THE EXCISE (SPIRITS) ACT, 1863.

(ACT XVI OF 1863.)

[Passed on the 10th March, 1863.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1863	XVI	Excise (Spirits)	Rep. in pt., Act XII of 1891. Am. in pt., Act VIII of 1894.

An Act to make special provision for the levy of the Excise duty payable on spirits used exclusively in Arts and Manufactures or in Chemistry.

WHEREAS it is expedient to make special provision for the levy of the excise duty payable on spirits used exclusively in arts and manufactures or in chemistry; It is enacted as follows :—

Duty payable on removal of such spirits from distillery.

1. Spirits intended to be used exclusively in arts and manufactures or in chemistry may be removed from any licensed distillery in any part of British India on payment of duty [1] not exceeding five [1] per cent. on the value of the spirits :

Provided that no spirits shall be so removed until they have been effectually and permanently rendered unfit for human consumption.

Rules for ascertaining that spirits to be removed have been rendered unfit for human consumption, etc.

2. The Board of Revenue, or other authority specially authorised in that behalf by the Local Government, shall prescribe from time to time, subject to the approval of the Local Government, rules—

for ascertaining and determining that spirits proposed to be removed for the purposes aforesaid have been effectually and permanently rendered unfit for human consumption, as required by section 1 of this Act ;

for causing such spirits to be so rendered, if necessary, by its own officers at the expense of the person who wishes to remove them ; and

for fixing the value of the spirit on which the *ad valorem* duty shall be levied.

3. Every person who shall wilfully contravene any rule prescribed by the Board of Revenue, or other authority as aforesaid, under the last preceding section of this Act, shall be liable on conviction before any officer exercising the powers of a Magistrate to a penalty not exceeding five hundred rupees for every such offence.

Penalty for breach of such rules.

Leg. Changes :—[1] Substituted by Act VIII of 1894.

Penalty for attempting to render fit for human consumption spirits removed under Act.

4. Every person who shall attempt, or shall connive at an attempt, to render fit for human consumption, spirits removed from a distillery under the provisions of this Act, shall be liable to a penalty not exceeding one thousand rupees ;

and the possessor of such spirits on which such attempt has been made, or which may have been rendered fit for human consumption, shall be liable on conviction before any officer exercising the powers of a Magistrate, to a penalty not exceeding five hundred rupees.

5. Any penalty imposed under either of the last two preceding sections may in case of non-payment be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand of the officer by whom such penalty was imposed.

6. In case any such penalty shall not be forthwith paid, any such officer may order the offender to be apprehended and detained in safe custody, until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

Imprisonment of offender in case of failure to recover penalty by distress.

7. If upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such penalty, and the same shall not be forthwith paid, or

in case it shall appear to the satisfaction of such officer by the confession of the offender or otherwise that he has not sufficient goods and chattels whereupon such penalty could be levied if a warrant of distress were issued,

any such officer may by warrant under his hand commit the offender to the civil jail, there to be imprisoned, according to the discretion of such officer, for any term not exceeding two calendar months when the amount of penalty shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

8. [*Provisions of section 11, Act III of 1852, relating to adulteration, not to apply to spirits rendered unfit for consumption under Act*]. *Rep. by the Repealing and Amending Act, 1891 (XII of 1891), S. 2 (1).*

9. In every case of conviction under section 3 or section 4 of this Act, the liquor or spirits with the cask or vessel containing the same, and the cart, boat and animal or animals employed in carrying such liquor or spirit, shall be liable to confiscation.

Confiscation in cases of conviction under S. 3 or 4.

THE INDIAN EXPLOSIVES ACT, 1884.

(ACT IV OF 1884.)

[Passed on the 26th February, 1884.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1884	IV	Explosives	Rep. in pt., Act X of 1889, " " Act XII of 1891. " " Act X of 1914.

An Act to regulate the manufacture, possession, use, sale, transport and importation of Explosives.

WHEREAS it is expedient to regulate the manufacture, possession, use, sale, transport and importation of explosives; It is hereby enacted as follows:—

Short title. 1. (1) This Act may be called the Indian Explosives Act, 1884, and

Local extent. (2) It extends to the whole of British India.

2. (1) This Act shall come into force on such day as the Governor General in Council, by notification in the Gazette of India, appoints:

[1] (2) * * *

3. [Repeal of portions of Act XII of 1875]. Rep. by Act X of 1889.

Definitions. 4. In this Act, unless there is something repugnant in the subject or context,—

(1) "explosive"—

(a) means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires and every other substance, whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion, or a pyro-technic effect; and

(b) includes fog-signals, fireworks, fuzes, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined:

(2) "manufacture" includes the process of dividing into its component parts, or otherwise breaking up or unmaking, any explosive, or making fit for use any damaged explosive, and the process of re-making, altering or repairing any explosive:

(3) "vessel" includes every ship, boat and other vessel used in navigation, whether propelled by oars or otherwise:

Leg. Changes:—[1] Sub-S. (2) was repealed by the Repealing and Amending Act, 1891 (XII of 1891).

(4) "carriage" includes any carriage, wagon, cart, truck, vehicle or other means of conveying goods or passengers by land, in whatever manner the same may be propelled :

(5) "master" includes every person (except a pilot or harbour-master) having for the time being command or charge of a vessel : provided that, in reference to any boat belonging to a ship, "master" shall mean the master of the ship :

(6) "import" means to bring into British India by sea or land.

5. (1) The Governor General in Council may for any part of British India, and each Local Government, with the previous sanction of the Governor General in Council, may for any part of the territories under its administration, make rules consistent with this Act to regulate or prohibit, except under and in accordance with the conditions of a license ^(a) granted as provided by those rules, the manufacture, possession, use, sale, transport and importation of explosives, or any specified class of explosives.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say :—

- (a) the authority by which licenses may be granted ;
- (b) the fees to be charged for licenses, and the other sums (if any) to be paid for expenses by applicants for licenses ;
- (c) the manner in which applications for licenses must be made, and the matters to be specified in such applications ;
- (d) the form in which, and the conditions on and subject to which, licenses must be granted ;
- (e) the period for which licenses are to remain in force ; and
- (f) the exemption absolutely or subject to conditions of any explosives from the operation of the rules.

(3) The authority making rules under this section may by the rules impose penalties on all persons manufacturing, possessing, using, selling, transporting or importing explosives in breach of the rules, or otherwise contravening the rules :

Provided that the maximum penalty which may be imposed by any such rules shall not exceed—

- (a) in the case of a person so importing or manufacturing an explosive, a fine which may extend to three thousand rupees ;
- (b) in the case of a person so possessing, using or transporting an explosive, a fine which may extend to one thousand rupees ;
- (c) in the case of a person so selling an explosive, a fine which may extend to five hundred rupees ; and
- (d) in any other case, two hundred rupees.

Case-law :—(a) License not necessary for 'patakhs' or 'crackers,' 8 P.R. 1910, Or.; nor for *lavangi* crackers, 18 Bom. L.R. 556; China crackers, whether explosive, 25 M.L.T. 175; licensee cannot freely associate other persons, 1 Weir 756.

Power for Governor General in Council to prohibit the manufacture, possession or importation of specially dangerous explosives.

6. (1) Notwithstanding anything in the rules under the last foregoing section, the Governor General in Council may, from time to time, by notification in the Gazette of India,—

- (a) prohibit, either absolutely or subject to conditions, the manufacture, possession or importation of any explosive which is of so dangerous a character that, in the opinion of the Governor General in Council, it is expedient for the public safety to issue the notification; [1]*

[1] (b) * * * * *

(2) The officers of sea customs at every port shall have the same power in respect of any explosive with regard to the importation of which a notification has been issued under this section and the vessel containing the explosive as they have for the time being in respect of any article the importation of which is prohibited or regulated by the law relating to sea customs and the vessel containing the same; and the enactments for the time being in force relating to sea customs or any such article or vessel shall apply accordingly.

(3) Any person manufacturing, possessing or importing an explosive in contravention of a notification issued under this section shall be punished with fine which may extend to three thousand rupees, and, in the case of importation by water, the owner and master of the vessel in which the explosive is imported shall, in the absence of reasonable excuse, each be punished with fine which may extend to three thousand rupees.

Power to make rules conferring powers of inspection, search, seizure, detention and removal.

7. (1) The Governor General in Council, or the Local Government with the previous sanction of the Governor General in Council, may make rules consistent with this Act authorising any officer, either by name or in virtue of his office—

- (a) to enter, inspect and examine any place, carriage or vessel in which an explosive is being manufactured, possessed, used, sold, transported or imported under a license granted under this Act, or in which he has reason to believe that an explosive has been or is being manufactured, possessed, used, sold, transported or imported in contravention of this Act or of the rules made under this Act;
- (b) to search (a) for explosives therein;
- (c) to take samples of any explosive found therein on payment of the value thereof; and
- (d) to seize, detain, remove and, if necessary, destroy any explosive found therein.

(2) The provisions of the Code of Criminal Procedure relating to X of 1882, searches under that Code shall, so far as the same are applicable, apply to searches by officers authorized by rules under this section.

Leg. Changes :—[1] Repealed by Act X of 1914.

Case-law :—(a) See 39 C. 119 = 15 Ind. Cas. 65 (search in the presence of superior officers, legal).

8. Whenever there occurs in or about, or in connection with, any place in which an explosive is manufactured, possessed or used, or any carriage or vessel either conveying an explosive or on or from which an explosive is being loaded or unloaded, any accident by explosion ^(a) or by fire attended with loss of human life or serious injury to person or property, or of a description usually attended with such loss or injury, the occupier ^(b) of the place, or the master of the vessel, or the person in charge of the carriage, as the case may be, shall forthwith give notice thereof to the officer in charge of the nearest police-station.

9. (1) Whenever, in the opinion of a District Magistrate, Sub-divisional Magistrate or any other Magistrate specially empowered by the Local Government in this behalf, an inquiry is necessary into the cause of any accident of the description mentioned in section 8, he may either himself make the inquiry or direct a Magistrate subordinate to himself to make the inquiry.

(2) Any Magistrate making an inquiry under this section shall, for the purposes of conducting the inquiry, have all the powers which he would have in holding an inquiry into an offence under the Code of Criminal Procedure.

(3) The powers conferred on a Magistrate by this section may in a Presidency-town be exercised by the Commissioner of Police as well as by any Magistrate specially empowered in this behalf under sub-section (1).

10. When a person is convicted of an offence punishable under this Act or the rules made under this Act, the Court before which he is convicted may direct that the explosive, or ingredient of the explosive, or the substance (if any) in respect of which the offence has been committed, or any part of that explosive, ingredient or substance, shall, with the receptacles containing the same, be forfeited.

11. Where the owner or master of a vessel is adjudged under this Act to pay a fine for an offence committed with, or in relation to, that vessel, the Court may, in addition to any other power it may have for the purpose of compelling payment of the fine, direct it to be levied by distress and sale of the vessel, and the tackle, apparel and furniture thereof, or so much thereof as is necessary.

12. Whoever abets, within the meaning of the Indian Penal Code, the commission of an offence punishable under this Act, or the rules made under this Act, or attempts to commit any such offence and in such attempt does any act towards the commission of the same, shall be punished as if he had committed the offence.

13. Whoever is found committing any act for which he is punishable under this Act or the rules under this Act, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any railway or port, or any carriage, ship or boat, may be apprehended without a warrant by a Police

Case-law :—(a) See 16 Cr. L.J. 621=30 Ind. Cas. 446=8 Bur. L.T. 288.
(b) Meaning of, *ibid*.

officer, or by the occupier of, or the agent or servant of, or other person authorized by the occupier of, that place, or by any agent or servant of, or other person authorized by, the railway administration or conservator of the port, and be removed from the place where he is arrested and conveyed as soon as conveniently may be before a Magistrate.

Saving for manufacture, possession, use, sale, transport or importation by Government.

14. Nothing in this Act shall apply to the manufacture, possession, use, sale, transport or importation of any explosive—

(a) by order of the Government, or

(b) by any person employed under the Government in the execution of this Act, or as a keeper of a magazine, artizan, soldier, sailor, policeman or otherwise, or enrolled as a volunteer under the Indian Volunteers Act, 1869, in the course of his XX of 1869, employment or duty as such.

Saving of Indian Arms Act, 1878.

15. Nothing in this Act shall affect the provisions of the Indian Arms Act, 1878:

XI of 1878.

Provided that an authority granting a license under this Act for the manufacture, possession, sale, transport or importation of an explosive may, if empowered in this behalf by the rules under which the license is granted, direct by an order written on the license that it shall have the effect of a like license granted under the said Indian Arms Act.

XI of 1878.

16. Nothing in this Act or the rules under this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or those rules, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or those rules:

Saving as to liability under other law.

Provided that a person shall not be punished twice for the same offence.

17. The Governor General in Council may, from time to time, by notification in the Gazette of India, declare that any substance which appears to the Governor General in Council to be specially dangerous to life or property, by reason either of its explosive properties or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act; and the provisions of this Act (subject to such exceptions, limitations and restrictions as may be specified in the notification) shall accordingly extend to that substance in like manner as if it were included in the definition of the term "explosive" in this Act.

Extension of definition of "explosive" to other explosive substances.

Procedure for making, publication and confirmation of rules.

18. (1) An authority making rules under this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made in such manner as the Governor General in Council, from time to time, by notification in the Gazette of India, prescribes.

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(4) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) A rule made under this Act shall not take effect if it is made by the Governor General in Council until it has been published in the Gazette of India, and if it is made by the Local Government until it has been published in the local official Gazette.

(6) The publication in the Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made, and, if it requires sanction, that it has been duly sanctioned.

(7) All powers to make rules conferred by this Act may be exercised from time to time as occasion requires.

THE EXPLOSIVE SUBSTANCES ACT, 1908.

(ACT VI OF 1908.)

[Passed on the 8th June, 1908.]

An Act further to amend the law relating to explosive substances.

WHEREAS it is necessary further to amend the law relating to explosive substances ; It is hereby enacted as follows :—

Short title, extent and application. 1. (1) This Act may be called the Explosive Substances Act, 1908.

(2) It extends to the whole of British India and applies also to—

(a) all native Indian subjects of His Majesty in any place without and beyond British India ;

(b) all other British subjects within the territories of any native prince or chief in India.

2. In this Act the expression " explosive substance " shall be deemed to include any materials for making any explosive substance ; also any apparatus, machine, implement, or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance ; also any part of any such apparatus, machine, or implement.

3. Any person who unlawfully and maliciously causes (a) by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to ten years, to which fine may be added.

Case-law :—(a) Essentials, 7 M.L.T. 314 = 20 M.L.J. 657 = 11 Cr. L.J. 222 = (1910) M.W.N 77.

Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.

4. Any person who unlawfully and maliciously—

- (a) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in British India of a nature likely to endanger life or to cause serious injury to property ; or
- (b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in British India, or to enable any other person by means thereof to endanger life or cause serious injury to property in British India ;

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished (a) with transportation for a term which may extend to twenty years, to which fine may be added, or with imprisonment for a term which may extend to seven years, to which fine may be added.

5. Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion (b) that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for lawful object, be punishable with transportation for a term which may extend to fourteen years, to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added.

Punishment for making or possessing explosives under suspicious circumstances.

6. Any person who by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any offence under this Act shall be punished with the punishment provided for the offence.

Punishment of abettors.

7. No court shall proceed to the trial of any person for an offence against this Act except with the consent (c) of the Local Government or the Governor General in Council.

Restriction on trial of offences.

Case-law :—(a) Conviction not vitiated by omission of words ' unlawfully and maliciously ' in the charge, 19 C.W.N. 676. (b) Essentials, 7 M.L.T. 314=11 Cr. L.J. 222 ; possession of or control over explosive substance under suspicious circumstances casts onus of proving innocence on the possessor, 40 C. 898. (c) Trial on fresh complaint with sanction after withdrawal of first complaint lodged without sanction, legal, 39 C. 119.

THE EXTRADITION (ENGLISH) ACT, 1870.

(33 & 34 VICT., C. 52.)

[Passed on the 9th August, 1870.]

An Act for amending the Law relating to the Extradition of Criminals.

WHEREAS it is expedient to amend the Law relating to the surrender to foreign States of persons accused or convicted of the commission of certain crimes within the jurisdiction of such States, and to the trial of criminals surrendered by foreign States to this country :

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PRELIMINARY.

Short title. 1. This Act may be cited as "the Extradition Act, 1870."

Where arrange-
ment for surrender
of criminals made,
Order in Council to
apply Act. 2. Where an arrangement has been made with any foreign State with respect to the surrender to such State of any fugitive criminals, Her Majesty may, by Order in Council, direct that this Act shall apply in the case of such foreign State.

Her Majesty may, by the same or any subsequent order, limit the operation of the order, and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the order, and render the operations thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient.

Every such order shall recite or embody the terms of the arrangement, and shall not remain in force for any longer period than the arrangement.

Every such order shall be laid before both Houses of Parliament within six weeks after it is made, or, if Parliament be not then sitting, within six weeks after the then next meeting of Parliament, and shall also be published in the London Gazette.

Restrictions on
surrender of crimi-
nals. 3. The following restrictions shall be observed with respect to the surrender of fugitive criminals :

(1) A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the police magistrate or the court before whom he is brought on *habeas corpus*, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character :

(2) A fugitive criminal shall not be surrendered to a foreign state unless provision is made by the law of that state, or by arrangement, that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be detained or tried

in that foreign state for any offence committed, prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded :

(3) A fugitive criminal who has been accused of some offence within English jurisdiction not being the offence for which his surrender is asked, or is undergoing sentence under any conviction in the United Kingdom, shall not be surrendered until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise :

(4) A fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

Provisions of arrangement for surrender. **4.** An Order in Council for applying this Act in the case of any foreign state shall not be made unless the arrangement —

(1) provides for the determination of it by either party to it after the expiration of a notice not exceeding one year ; and,

(2) is in conformity with the provisions of this Act, and in particular with the restrictions on the surrender of fugitive criminals contained in this Act.

5. When an order applying this Act in the case of any foreign state has been published in the London Gazette, this Act (after the date specified in the order, or if no date is specified, after the date of the publication), shall so long as the order remains in force, but subject to the limitations, restrictions, conditions, exceptions, and qualifications, if any, contained in the order, apply in the case of such foreign state. An Order in Council shall be conclusive evidence that the arrangement therein referred to complies with the requisitions of this Act, and that this Act applies in the case of the foreign state mentioned in the order, and the validity of such order shall not be questioned in any legal proceedings whatever.

6. Where this Act applies in the case of any foreign state, every fugitive criminal of that state who is in or suspected of being in any part of Her Majesty's dominions, or that part which is specified in the order applying this Act (as the case may be), shall be liable to be apprehended and surrendered in manner provided by this Act, whether the crime in respect of which the surrender is sought was committed before or after the date of the order, and whether there is or is not any concurrent jurisdiction in any court of Her Majesty's dominions over that crime.

7. A requisition for the surrender of a fugitive criminal of any foreign state, who is in or suspected of being in the United Kingdom, shall be made to a Secretary of State by some person recognised by the Secretary of State as a diplomatic representative of that foreign state. A Secretary of State may, by order under his hand and seal, signify to a police magistrate that such requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal.

Publication and effect of order.

Liability of criminal to surrender.

Order of Secretary of State for issue of warrant in United Kingdom if crime is not of a political character.

If the Secretary of State is of opinion that the offence is one of a political character, he may, if he think fit, refuse to send any such order, and may also at any time order a fugitive criminal accused or convicted of such offence to be discharged from custody.

8. A warrant for the apprehension of a fugitive criminal, whether accused or convicted of crime, who is in or suspected of being in the United Kingdom, may be issued—

Issue of warrant
by police magis-
trate, justice, &c.

(1) by a police magistrate on the receipt of the said order of the Secretary of State, and on such evidence as would in his opinion justify the issue of the warrant if the crime had been committed or the criminal convicted in England; and

(2) by a police magistrate or any justice of the peace in any part of the United Kingdom, on such information or complaint and such evidence or after such proceedings as would in the opinion of the person issuing the warrant justify the issue of a warrant if the crime had been committed or the criminal convicted in that part of the United Kingdom in which he exercises jurisdiction.

Any person issuing a warrant under this section without an order from a Secretary of State shall forthwith send a report of the fact of such issue, together with the evidence and information or complaint, or certified copies thereof, to a Secretary of State, who may if he think fit order the warrant to be cancelled, and the person who has been apprehended on the warrant to be discharged.

A fugitive criminal, when apprehended on a warrant issued without the order of a Secretary of State, shall be brought before some person having power to issue a warrant under this section, who shall by warrant order him to be brought and the prisoner shall accordingly be brought before a police magistrate.

A fugitive criminal apprehended on a warrant issued without the order of a Secretary of State shall be discharged by the police magistrate, unless the police magistrate, within such reasonable time as, with reference to the circumstances of the case, he may fix, receives from a Secretary of State an order signifying that a requisition has been made for the surrender of such criminal.

9. When a fugitive criminal is brought before the police magistrate, the police magistrate shall hear the case in the same manner, and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before him charged with an indictable offence committed in England.

Hearing of case
and evidence of poli-
tical character of
crime.

The police magistrates shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused or alleged to have been convicted is an offence of a political character or is not an extradition crime.

10. In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorising the arrest of such criminal is duly authenticated, and such evidence is produced as (subject to the provisions of this Act)

Committal or dis-
charge of prisoner.

would, according to the law of England, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in England, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.

In the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, prove that the prisoner was convicted of such crime, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.

If he commits such criminal to prison, he shall commit him to the Middlesex House of Detention, or to some other prison in Middlesex, there to await the warrant of a Secretary of State for his surrender, and shall forthwith send to a Secretary of State a certificate of the committal, and such report upon the case as he may think fit.

Surrender of fugitive to foreign state by warrant of Secretary of State.

11. If the police magistrate commits a fugitive criminal to prison, he shall inform such criminal that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of Habeas Corpus.

Upon the expiration of the said fifteen days, or, if a writ of Habeas Corpus is issued, after the decision of the Court upon the return to the writ, as the case may be, or after such further period as may be allowed in either case by a Secretary of State, it shall be lawful for a Secretary of State, by warrant under his hand and seal, to order the fugitive criminal (if not delivered on the decision of the Court) to be surrendered to such person as may in his opinion be duly authorised to receive the fugitive criminal by the foreign state from which the requisition for the surrender proceeded, and such fugitive criminal shall be surrendered accordingly.

It shall be lawful for any person to whom such warrant is directed and for the person so authorised as aforesaid to receive, hold in custody, and convey within the jurisdiction of such foreign state the criminal mentioned in the warrant; and if the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, it shall be lawful to retake him in the same manner as any person accused of any crime against the laws of that part of Her Majesty's dominions to which he escapes may be retaken upon an escape.

12. If the fugitive criminal who has been committed to prison is not surrendered and conveyed out of the United Kingdom within two months after such committal or, if a writ of Habeas Corpus is issued, after the decision of the court upon the return to the writ, it shall be lawful for any judge of one of Her Majesty's Superior Courts at Westminster, upon application made to him by or on behalf of the criminal, and upon proof that reasonable notice of the intention to make such application has been given to a Secretary of State, to order the criminal to be discharged out of custody, unless sufficient cause is shown to the contrary.

Discharge of persons apprehended if not conveyed out of United Kingdom within two months.

13. The warrant of the police magistrate issued in pursuance of this Act may be executed in any part of the United Kingdom in the same manner as if the same had been originally issued or subsequently indorsed by a justice of the peace having jurisdiction in the place where the same is executed.

Execution of warrant of police magistrate.

14. Depositions or statements on oath, taken in a foreign state, and copies of such original depositions or statements, and foreign certificates of or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence in proceedings under this Act.

Depositions to be evidence. 6 and 7 Vict., c. 76.

15. Foreign warrants and depositions or statements on oath, and copies thereof, and certificates of or judicial documents stating the fact of a conviction, shall be deemed duly authenticated for the purposes of this Act if authenticated in manner provided for the time being by law or authenticated as follows :

Authentication of depositions and warrants. 29 and 30 Vict., c. 121.

(1) If the warrant purports to be signed by a judge, magistrate, or officer of the foreign state where the same was issued ;

(2) If the depositions or statements or the copies thereof purport to be certified under the hand of a judge, magistrate, or officer of the foreign state where the same were taken to be the original depositions or statements, or to be true copies thereof, as the case may require ; and

(3) If the certificate of or judicial document stating the fact of conviction purports to be certified by a judge, magistrate, or officer of the foreign state where the conviction took place ; and

if in every case the warrants, depositions, statements, copies, certificates, and judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of the minister of justice, or some other minister of state : And all courts of justice, justices, and magistrates shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof.

Crimes committed at sea.

16. Where the crime in respect of which the surrender of a fugitive criminal is sought was committed on board any vessel on the high seas which comes into any port of the United Kingdom, the following provisions shall have effect :

Jurisdiction as to crimes committed at sea

(1) This Act shall be construed as if any stipendiary magistrate in England or Ireland, and any sheriff or sheriff substitute in Scotland, were substituted for the police-magistrate throughout this Act, except the part relating to the execution of the warrant of the police-magistrate :

(2) The criminal may be committed to any prison to which the person committing him has power to commit persons accused of the like crime :

(3) If the fugitive criminal is apprehended on a warrant issued without the order of a Secretary of State, he shall be brought before the stipendiary magistrate, sheriff, or sheriff substitute who issued the warrant, or who has jurisdiction in the port where the vessel lies, or in the place nearest to that port.

Fugitive criminals in British Possessions.

17. This Act, when applied by Order in Council, shall, unless it is otherwise provided by such order, extend to every British possession in the same manner as if throughout this Act the British possession were substituted for the United Kingdom or England, as the case may require, but with the following modifications; namely,

(1) The requisition for the surrender of a fugitive criminal who is in or suspected of being in a British possession may be made to the governor of that British possession by any person recognised by that governor as a consul general, consul, or vice-consul, or (if the fugitive criminal has escaped from a colony or dependency of the foreign state on behalf of which the requisition is made) as the governor of such colony or dependency:

(2) No warrant of a Secretary of State shall be required, and all powers vested in or acts authorised or required to be done under this Act by the police-magistrate and the Secretary of State, or either of them, in relation to the surrender of a fugitive criminal, may be done by the governor of the British possession alone:

(3) Any prison in the British possession may be substituted for a prison in Middlesex:

(4) A judge of any court exercising in the British possession the like powers as the Court of Queen's Bench exercises in England may exercise the power of discharging a criminal when not conveyed within two months out of such British possession.

18. If by any law or ordinance, made before or after the passing of this Act by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may, by the Order in Council applying this Act, in the case of any foreign state, or by any subsequent order, either

suspend the operation within any such British possession of this Act, or of any part thereof, so far as it relates to such foreign state, and so long as such law or ordinance continues in force there and no longer;

or direct that such law or ordinance, or any part thereof, shall have effect in such British possession, with or without modifications and alterations, as if it were part of this Act.

General Provisions.

19. Where, in pursuance of any arrangement with a foreign state, any person accused or convicted of any crime which, if committed in England, would be one of the crimes described in the first schedule to this Act is surrendered by that foreign state, such person shall not, until he has been restored or had an opportunity of returning

to such foreign state, be triable or tried for any offence committed prior to the surrender in any part of Her Majesty's dominions other than such of the said crimes as may be proved by the facts on which the surrender is grounded.

20. The forms set forth in the second schedule to this Act, or forms as near thereto as circumstances admit, may be used in all matters to which such forms refer, and in the case of a British possession may be so used, *mutatis mutandis*, and when used shall be deemed to be valid and sufficient in law.

As to use of forms in second schedule.

21. Her Majesty may, by Order in Council, revoke or alter, subject to the restrictions of this Act, any Order in Council made in pursuance of this Act, and all the provisions of this Act with respect to the original order shall (so far as applicable) apply, *mutatis mutandis*, to any such new order.

Revocation, etc., of Order in Council.

22. This Act (except so far as it relates to the execution of warrants in the Channel Islands) shall extend to the Channel Islands and Isle of Man in the same manner as if they were part of the United Kingdom; and the royal courts of the Channel Islands are hereby respectively authorised and required to register this Act.

Application of Act in Channel Islands and Isle of Man.

23. Nothing in this Act shall affect the lawful powers of Her Majesty or of the Governor General of India in Council to make treaties for the extradition of criminals with Indian native states, or with other Asiatic states conterminous with British India, or to carry into execution the provisions of any such treaties made either before or after the passing of this Act.

Saving for Indian treaties.

24. The testimony of any witness may be obtained in relation to any criminal matter pending in any court or tribunal in a foreign state in like manner as it may be obtained in relation to any civil matter under the Act of the session of the nineteenth and twentieth years of the reign of Her present Majesty, chapter one hundred and thirteen, intituled "An Act to provide for taking evidence in Her Majesty's Dominions in relation to civil and commercial matters pending before foreign tribunals;" and all the provisions of that Act shall be construed as if the term civil matter included a criminal matter, and the term cause included a proceeding against a criminal: Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

Power of foreign state to obtain evidence in United Kingdom.

25. For the purposes of this Act, every colony, dependency, and constituent part of a foreign state, and every vessel of that state, shall (except where expressly mentioned as distinct in this Act) be deemed to be within the jurisdiction of and to be part of such foreign state.

Foreign state includes dependencies.

26. In this Act, unless the context otherwise requires,—

The term "British possession" means any colony, plantation, island, territory, or settlement within Her Majesty's dominions, and not within the United Kingdom, the Channel Islands, and Isle of Man; and all colonies, plantations, islands, territories, and settlements under one legislature, as hereinafter defined, are deemed to be one British possession:

Definition of term "British possessions."

The term "legislature" means any person or persons who can exercise legislative authority in a British possession, and where there are local legislatures as well as a central legislature, means the central legislature only:

The term "governor" means any person or persons administering the government of a British possession, and includes the governor of any part of India:

The term "extradition crime" means a crime which, if committed in England or within English jurisdiction, would be one of the crimes described in the first schedule to this Act:

"Extradition crime":

The terms "conviction" and "convicted" do not include or refer to a conviction which under foreign law is a conviction for contumacy, but the term "accused person" includes a person so convicted for contumacy:

The term "fugitive criminal" means any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign state who is in or is suspected of being in some part of Her Majesty's dominions; and the term "fugitive criminal of a foreign state" means a fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of that state:

"Fugitive criminal":

"Fugitive criminal of foreign state":

"Secretary of State":

The term "Secretary of State" means one of Her Majesty's Principal Secretaries of State:

"Police magistrate":

The term "police magistrate" means a chief magistrate of the metropolitan police courts, or one of the other magistrates of the metropolitan police court in Bow Street:

"Justice of the peace":

The term "justice of the peace" includes in Scotland any sheriff, sheriff's substitute, or magistrate:

The term "warrant," in the case of any foreign state, includes any judicial document authorising the arrest of a person accused or convicted of crime.

"Warrant":

Repeal of Acts.

27. The Acts specified in the third schedule to this Act are hereby repealed as to the whole of Her Majesty's dominions; and this Act (with the exception of anything contained in it which is inconsistent with the treaties referred to in the Acts so repealed) shall apply (as regards crimes committed either

Repeal of Acts in third schedule

before or after the passing of this Act), in the case of the foreign states with which those treaties are made, in the same manner as if an Order in Council referring to such treaties had been made in pursuance of this Act, and as if such order had directed that every law and ordinance which is in force in any British possession with respect to such treaties should have effect as part of this Act :

Provided that if any proceedings for or in relation to the surrender of a fugitive criminal have been commenced under the said Acts previously to the repeal thereof, such proceedings may be completed, and the fugitive surrendered, in the same manner as if this Act had not been passed.

SCHEDULES.

FIRST SCHEDULE.

List of Crimes.

The following list of crimes is to be construed according to the law existing in England, or in a British possession, (as the case may be), at the date of the alleged crime, whether by common law or by statute made before or after the passing of this Act :

Murder, and attempt and conspiracy to murder.

Manslaughter.

Counterfeiting and altering money and uttering counterfeit or altered money.

Forgery, counterfeiting, and altering, and uttering what is forged or counterfeited or altered.

Embezzlement and larceny.

Obtaining money or goods by false pretences.

Crimes by bankrupts against bankruptcy law.

Fraud by a bailee, banker, agent, factor, trustee, or director, or member, or public officer of any company made criminal by any act for the time being in force.

Rape.

Abduction.

Child stealing.

Burglary and housebreaking.

Arson.

Robbery with violence.

Threats by letter or otherwise with intent to extort.

Piracy by law of nations.

Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.

Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

SECOND SCHEDULE.

Form of Order of Secretary of State to the Police Magistrate.

To the chief magistrate of the metropolitan police courts or other magistrate of the metropolitan police court in Bow Street (or the stipendiary magistrate at———).

Whereas, in pursuance of an arrangement with ———, referred to in an Order of Her Majesty in Council dated the ——— day of ———, a requisition has been made to me, ———, one of Her Majesty's Principal Secretaries of State, by ———, the diplomatic representative of ———, for the surrender of ———, late of ———, accused (or convicted) of the commission of the crime of ——— within the jurisdiction of ———: Now I hereby, by this my order under my hand and seal, signify to you that such requisition has been made, and require you to issue your warrant for the apprehension of such fugitive, provided that the conditions of the Extradition Act, 1870, relating to the issue of such warrant, are in your judgment complied with.

Given under the hand and seal of the undersigned, one of Her Majesty's Principal Secretaries of State, this ——— day of ——— 18 .

Form of Warrant of Apprehension by Order of Secretary of State.

Metropolitan police district, (or county or borough of) to wit,	To all and each of the constables of the metro- politan police force (or of the county or borough of ———).
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Whereas, the Right Honourable ——— one of Her Majesty's Principal Secretaries of State, by order under his hand and seal, hath signified to me that requisition hath been duly made to him for the surrender of ——— late of ——— accused (or convicted) of the commission of the crime of ——— within the jurisdiction of ———: This is therefore to command you in Her Majesty's name forthwith to apprehend the said ——— pursuant to the Extradition Act, 1870, wherever he may be found in the United Kingdom or Isle of Man, and bring him before me or some other (*magistrate sitting in this court), to show cause why he should not be surrendered in pursuance of the said Extradition Act, for which this shall be your warrant.

Given under my hand and seal at (*Bow Street, one of the police courts of the metropolis) this ——— day of ——— 18 .

J. P.

Form of Warrant of Apprehension without Order of Secretary of State.

Metropolitan police district, (or county or borough of) to wit,	To all and each of the constables of the metro- politan police force (or of the county or borough of ———).
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Whereas it has been shown to the undersigned, one of Her Majesty's justices of the peace in and for the metropolitan police district (or the said county or borough of ———) that ——— late of ——— is accused (or convicted) of the commission of the crime of ——— within the jurisdiction of ———: This is therefore to command you in Her Majesty's name forthwith to apprehend the said ——— and to bring him before me or some other magistrate sitting at this court (or one of Her Majesty's justices of the peace in and for the county (or borough) of ——— to be further dealt with according to law, for which this shall be your warrant.

*Note.—Alter as required.

Given under my hand and seal at Bow Street, one of the police courts of the metropolis, (or——— in the county or borough aforesaid) this———day of———18 .

J. P.

Form of Warrant for bringing Prisoner before the Police Magistrate.

To———constable of the police force of———
County (or bo- ———and to all other peace officers in the said county
rough) of to wit. (or borough) of———.

Whereas———late of———accused (or alleged to be convicted) of the commission of the crime of———within the jurisdiction of———has been apprehended and brought before the undersigned, one of Her Majesty's justices of the peace in and for the said county (or borough) of———: And whereas by the Extradition Act, 1870, he is required to be brought before the chief magistrate of the metropolitan police court, or one of the police magistrates of the metropolis sitting at Bow Street, within the metropolitan police district (or the stipendiary magistrate for———): This is therefore to command you the said constable in Her Majesty's name forthwith to take and convey the said ———to the metropolitan police district (or the said———) and there carry him before the said Chief Magistrate or one of the police magistrates of the metropolis sitting at Bow Street within the said district (or before a stipendiary magistrate sitting in the said———) to show cause why he should not be surrendered in pursuance of the Extradition Act, 1870, and otherwise to be dealt with in accordance with law, for which this shall be your warrant.

Given under my hand and seal at———in the county (or borough) aforesaid, this———day of———18 .

J. P.

Form of Warrant of Committal.

Metropolitan To———one of the constables of the metro-
politan police force, (or of the police force and to the
county or borough keeper of the———).
of) to wit.

Be it remembered, that on this———day of———in the year of our Lord———late of———is brought before me———the chief magistrate of the metropolitan police courts (or one of the police magistrates of the metropolis) sitting at the police court in Bow Street, within the metropolitan police district, (or a stipendiary magistrate for———,) to show cause why he should not be surrendered in pursuance of the Extradition Act, 1870, on the ground of his being accused (or convicted) of the commission of the crime of———within the jurisdiction of———, and forasmuch as no sufficient cause has been shown to me why he should not be surrendered in pursuance of the said Act:

This is therefore to command you the said constable in Her Majesty's name forthwith to convey and deliver the body of the said ———into the custody of the said keeper of the———at———, and you the said keeper to receive the said ———into your custody, and him there safely to keep until he is thence delivered pursuant to the provisions of the said Extradition Act, for which this shall be your warrant.

Given under my hand and seal at Bow Street, one of the police courts of the metropolis, (or at the said——) this——day of——
18 .

J. P.

Form of Warrant of Secretary of State for Surrender of Fugitive.

To the keeper of——and——to——.

Whereas——late of——accused (or convicted) of the commission of the crime of——within the jurisdiction of——, was delivered into the custody of you——the keeper of——by warrant dated——pursuant to the Extradition Act, 1870 :

Now I do hereby, in pursuance of the said Act, order you the said keeper to deliver the body of the said——into the custody of the said——, and I command you the said——to receive the said——into your custody, and to convey him within the jurisdiction of the said——, and there place him in the custody of any person or persons appointed by the said——to receive him, for which this shall be your warrant.

Given under the hand and seal of the undersigned, one of Her Majesty's Principal Secretaries of State, this——day of——.

THIRD SCHEDULE.

Year and Chapter.	Title.
6 and 7 Vict., c. 75 ...	An Act for giving effect to a convention between Her Majesty and the King of the French for the apprehension of certain offenders.
6 and 7 Vict., c. 76 ...	An Act for giving effect to a treaty between Her Majesty and the United States of America for the apprehension of certain offenders.
8 and 9 Vict., c. 120 ...	An Act for facilitating execution of the treaties with France and the United States of America for the apprehension of certain offenders.
25 and 26 Vict., c. 70 ...	An Act for giving effect to a convention between Her Majesty and the King of Denmark for the mutual surrender of criminals.
29 and 30 Vict., c. 121 ...	An Act for the amendment of the law relating to treaties of extradition.

THE EXTRADITION (ENGLISH) ACT, 1873.

(36 & 37 VICT., C. 60.)

[Passed on the 5th August, 1873.]

An Act to amend the Extradition Act, 1870.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act shall be construed as one with the Extradition Act, 1870, (in this Act referred to as the principal Act), and the principal Act and this Act may be cited together as the Extradition Acts, 1870 and 1873, and this Act may be cited alone as the Extradition Act, 1873.

Construction of
Act and short title.

Explanation of
S. 6 of 33 and 34
Vict., c. 52.

2. Whereas by section 6 of the principal Act it is enacted as follows :

"Where this Act applies in the case of any foreign state, every fugitive criminal of that state who is in or suspected of being in any part of Her Majesty's dominions, or that part which is specified in the order applying this Act (as the case may be), shall be liable to be apprehended and surrendered in manner provided by this Act, whether the crime in respect of which the surrender is sought was committed before or after the date of the order, and whether there is or is not any concurrent jurisdiction in any Court of Her Majesty's dominions over that crime."

And whereas doubts have arisen as to the application of the said section to crimes committed before the passing of the principal Act, and it is expedient to remove such doubts, it is therefore hereby declared that—

A crime committed before the date of the order includes in the said section a crime committed before the passing of the principal Act, and the principal Act and this Act shall be construed accordingly.

3. Whereas a person who is accessory before or after the fact, or counsels, procures, commands, aids, or abets the commission of any indictable offence, is by English law liable to be tried and punished as if he were the principal offender, but doubts have arisen whether such person as well as the principal offender can be surrendered under the principal Act, and it is expedient to remove such doubts; it is therefore hereby declared that—

Liability of
accessories to be
surrendered.

Every person who is accused or convicted of having counselled, procured, commanded, aided, or abetted the commission of any extradition crime, or of being accessory before or after the fact to any extradition crime, shall be deemed, for the purposes of the principal Act and this Act, to be accused or convicted of having committed such crime, and shall be liable to be apprehended and surrendered accordingly.

Explanation of
S. 14 of 33 and 34
Vict., c. 52, as to
statements on oath
including affirma-
tions.

4. Be it declared, that the provisions of the principal Act relating to depositions and statements on oath taken in a foreign state, and copies of such original depositions and statements, do and shall extend to affirmations taken in a foreign state, and copies of such affirmations.

5. A Secretary of State may, by order under his hand and seal, require a police magistrate or a justice of the peace to take evidence for the purposes of any criminal matter pending in any court or tribunal in any foreign state; and the police magistrate or justice of the peace, upon the receipt of such order, shall take the evidence of every witness appearing before him for the purpose in like manner as if such witness appeared on a charge against some defendant, for an indictable offence, and shall certify at the foot of the depositions so taken that such evidence was taken before him, and shall

Power of taking
evidence in United
Kingdom for foreign
criminal matters.

transmit the same to the Secretary of State ; such evidence may be taken in the presence or absence of the person charged, if any, and the fact of such presence or absence shall be stated in such deposition.

Any person may, after payment or tender to him of a reasonable sum for his costs and expenses in this behalf, be compelled, for the purposes of this section, to attend and give evidence and answer questions and produce documents, in like manner and subject to the like conditions as he may in the case of a charge preferred for an indictable offence.

Every person who wilfully gives false evidence before a police magistrate or justice of the peace under this section shall be guilty of perjury.

Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

6. The jurisdiction conferred by section 16 of the principal

Act on a stipendiary magistrate, and a sheriff or sheriff substitute, shall be deemed to be in addition to, and not in derogation or exclusion of, the jurisdiction of the police magistrate.

Explanation of
S 16 of 33 and 34
Vict., c. 52.

7. For the purposes of the principal Act and this Act a diplomatic

Explanation of
diplomatic represen-
tative and consul.

representative of a foreign state shall be deemed to include any person recognised by the Secretary of State as a consul-general of that state, and a consul or vice-consul shall be deemed to include any person recognised by the governor of a British possession as a consular officer of a foreign state.

8. The principal Act shall be construed as if

Addition to list of
crimes in schedule.

there were included in the first schedule to that Act the list of crimes contained in the schedule to this Act.

SCHEDULE

LIST OF CRIMES.

The following list of crimes is to be construed according to the law existing in England or in a British possession (as the case may be) at the date of the alleged crime, whether by common law or by statute made before or after the passing of this Act :

Kidnapping and false imprisonment.

Perjury, and subornation of perjury, whether under common or statute law.

Any indictable offence under the Larceny Act, 1861, or any Act 24 & 25 Vict., amending or substituted for the same, which is not included in the first schedule to the principal Act.

Any indictable offence under the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-seven, "To consolidate and amend the statute law of England and Ireland relating to malicious injuries to property," or any Act amending or substituted for the same, which is not included in the first schedule to the principal Act.

Extradition ACT XV OF 1903 (INDIAN EXTRADITION).

Any indictable offence under the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-eight, "To consolidate and amend the statute law of England and Ireland, relating to indictable offences by forgery," or any Act amending or substituted for the same, which is not included in the first schedule to the principal Act.

Any indictable offence under the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-nine, "To consolidate and amend the statute law of the United Kingdom against offences relating to the coin," or any Act amending or substituted for the same, which is not included in the first schedule to the principal Act.

Any indictable offence under the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter one hundred, "To consolidate and amend the statute law of England and Ireland relating to offences against the person," or any Act amending or substituted for the same, which is not included in the first schedule to the principal Act.

Any indictable offence under the laws for the time being in force in relation to bankruptcy which is not included in the first schedule to the principal Act.

THE INDIAN EXTRADITION ACT, 1903.

(ACT XV OF 1903.)

[Passed on the 4th November, 1903.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1872	XI	Foreign Jurisdiction and Extradition	Rep., Act XXI of 1879.
1879	XXI	Do.	Rep., Act XV of 1903.
1895	IX	Extradition (India)	Do.
1903	XV	Extradition (Indian)	Am., Act I of 1913. Rep. in pt., Act X of 1914.

An Act to consolidate and amend the law relating to the Extradition and Rendition of Criminals.

WHEREAS it is expedient to provide for the more convenient administration in British India of the Extradition Acts, 1870 and 1873, c. 52; 36 & 37 Vict., c. 60; and of the Fugitive Offenders Act, 1881;

and whereas it is also expedient to amend the law relating to the extradition of criminals in cases to which the Extradition Acts, 1870 and 1873, do not apply;

It is hereby enacted (a) as follows :—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called the Indian Extradition Act, 1903.

(2) It extends to the whole of British India (b) (including British Baluchistan, the Santhal Parganas and the Pargana of Spiti); and

(3) It shall come into force on such day as the Governor General in Council, by notification in the Gazette of India, may direct.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

- (a) "European British subject" means a European British subject as defined by the Code of Criminal Procedure for the time being in force:
- (b) "extradition offence" means any such offence as is described in the first schedule:
- (c) "Foreign State" means a State to which, for the time being, the Extradition Acts, 1870 and 1873, apply:
- (d) "High Court" means the High Court as defined by the Code of Criminal Procedure for the time being in force: 33 & 34 Vict.,
c. 52; 36 & 37
Vict., c. 60.
- (e) "offence" includes any act wheresoever committed which would, if committed in British India, constitute an offence: and
- (f) "rules" include prescribed forms.

CHAPTER II.

SURRENDER OF FUGITIVE CRIMINALS IN CASE OF FOREIGN STATES.

3. (1) Where a requisition is made to the Government of India or to any Local Government by the Government of any Foreign State for the surrender of a fugitive criminal (c) of that State, who is in or who is suspected of being in British India, the Government of India or the Local Government, as the case may be, may, if it thinks fit, issue an order to any Magistrate who would have had jurisdiction to inquire into the crime if it had been an offence committed within the local limits of his jurisdiction, directing him to inquire into the case.

(2) The Magistrate so directed shall issue a summons or warrant for the arrest of the fugitive criminal according as the case appears to be one in which a summons or warrant would ordinarily issue.

Case-law:—(a) The object of this Act is to provide law relating to offences committed by British subject beyond British India, 5 M. 33; the Code of Criminal Procedure (S. 188) is applicable to offences committed by British subjects in native states, 9 B. 333. (b) Conviction in British India for offence committed without, legality of, 8 C. 985. (c) Political criminals are not to be surrendered, *Re Castioni*, 1 Q.B. 149; what is offence of political character, 2 Q.B. 415.

(3) When such criminal appears or is brought before the Magistrate, the Magistrate shall inquire into the case in the same manner and have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by the Court of Session or High Court, and shall take such evidence as may be produced in support of the requisition and on behalf of the fugitive criminal, including any evidence to show that the crime of which such criminal is accused or alleged to have been convicted is an offence of a political character or is not an extradition crime.

(4) If the Magistrate is of opinion that a *prima facie* case is made out in support of the requisition, he may commit the fugitive criminal to prison (a) to await the orders (b) of the Government of India or the Local Government, as the case may be.

(5) If the Magistrate is of opinion that a *prima facie* case is not made out in support of the requisition, or if the case is one which is bailable under the provisions of the Code of Criminal Procedure for the time being in force, the Magistrate may release the fugitive criminal on bail.

(6) The Magistrate shall report the result of his inquiry to the Government of India, or the Local Government, as the case may be, and shall forward, together with such report, any written statement which the fugitive criminal may desire to submit for the consideration of the Government.

(7) If the Government of India or the Local Government, as the case may be, is of opinion that such report or written statement raises an important question of law, it may make an order referring such question of law to such High Court as may be named in the order, and the fugitive criminal shall not be surrendered until such question has been decided.

(8) If, upon receipt of such report and statement or upon the decision of any such question, the Government of India or the Local Government, as the case may be, is of opinion that the fugitive criminal ought to be surrendered, it may issue a warrant for the custody and removal of such criminal and for his delivery (c) at a place and to a person to be named in the warrant.

(9) It shall be lawful for any person to whom a warrant is directed in pursuance of sub-section (8), to receive, hold in custody and convey the person mentioned in the warrant, to the place named in the warrant, and, if such person escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be re-taken as a person accused of an offence against the law of British India may be re-taken upon an escape.

Case law :—(a) A British Magistrate is not warranted in keeping accused in custody on mere allegation that criminal proceedings are pending in Foreign State, *Rat. Un. Cr. C. 124*. (b) Jurisdiction of British Court over offence committed by foreigner, 10 P.R. 1868, Cr. (c) There is no objection to surrender when the criminal is not the subject of the demanding state, *Reg. v. Gang*, 9 Q.B.D. 93.

(10) If such a warrant as is prescribed by sub-section (8) is not issued and executed in the case of any fugitive criminal, who has been committed to prison under sub-section (4), within two months after such committal, the High Court may (a), upon application made to it on behalf of such fugitive criminal, and upon proof that reasonable notice of the intention to make such application has been given to the Government of India or the Local Government, as the case may be, order such criminal to be discharged, unless sufficient cause is shown to the contrary.

4. (1) Where it appears to any Magistrate of the first class or any Magistrate specially empowered by the Local Government in this behalf that a person within the local limits of his jurisdiction is a fugitive criminal of a Foreign State, he may, if he thinks fit, issue a warrant for the arrest of such person, on such information or complaint and on such evidence as would, in his opinion, justify the issue of a warrant if the crime of which he is accused or has been convicted had been committed within the local limits of his jurisdiction.

Power to Magistrate to issue warrant of arrest in certain cases. (2) The Magistrate shall forthwith report the issue of a warrant under this section to the Local Government.

Issue of warrant to be reported forthwith. (3) A person arrested on a warrant issued under this section shall not be detained more than two months unless within that period the Magistrate receives an order made with reference to such person under section 3, sub-section (1).

Person arrested not to be detained unless order received. (4) In the case of a person arrested or detained under this section the provisions of the Code of Criminal Procedure for the time being in force relating to bail shall apply in the same manner as if such person were accused of committing in British India the crime of which he is accused or has been convicted.

Bail. 5. (1) If the Government of India or any Local Government is of opinion that the crime of which any fugitive criminal of a Foreign State is accused or alleged to have been convicted is of a political character, it may, if it think fit, refuse to issue any order under section 3, sub-section (1).

Power of Government to refuse to issue order under section 3 when crime of political character. (2) The Government of India or the Local Government may also at any time stay any proceedings taken under this Chapter and direct any warrant issued under this Chapter to be cancelled and the person for whose arrest such warrant has been issued to be discharged.

Power of Government to discharge any person in custody at any time.

Case-law:—(a) The power of the High Court to interfere with Magistrate's action, 7 Bom. L.R. 463=2 Cr. L.J. 489; 88 C. 547; 39 C. 164; 41 C. 400; 46 C. 52.

References to
"Police Magistrate"
33 & 34 Vict., and "Secretary of
c. 52. State" in section 3
of Extradition Act,
1870.

6. The expressions "the Police Magistrate" and "the Secretary of State" in section 3 of the Extradition Act, 1870, shall be read as referring respectively to the Magistrate directed to inquire into a case under section 3 of this Act, and to the Government of India or the Local Government, as the case may be.

CHAPTER III.

SURRENDER OF FUGITIVE CRIMINALS IN CASE OF STATES OTHER THAN FOREIGN STATES.

7. (1) Where an extradition offence ^(a) has been committed or is supposed to have been committed by a person not being a European British subject in the territories of any State not being a Foreign State and such person escapes into or is in British India, and the Political Agent in or for such State issues a warrant addressed to the District Magistrate of any district in which such person is believed to be [1] or if such person is believed to be in any Presidency-town to the Chief Presidency Magistrate of such town [1] for his arrest and delivery at a place and to a person or authority indicated in the warrant, such Magistrate shall act in pursuance of such warrant ^(b) and may give directions accordingly.

Issue of warrant
by Political Agents
in certain cases.

(2) A warrant issued as mentioned in sub-section (1) shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants, and the accused person, when arrested, shall [1] be produced before the District Magistrate or Chief Presidency Magistrate, as the case may be, who shall record any statement made by him; such accused person shall then [1] unless released in accordance with the provisions of this Act, be forwarded to the place and delivered ^(c) to the person or authority indicated in the warrant.

Execution of such
warrant.

Leg. Changes :—[1] Added by Act I of 1913.

Case-law :—(a) The jurisdiction exercised by Political Agent and by the Governor-in-Council, is political, not judicial—legality of appeal to His Majesty in Council, 33 C. 219; the revisional powers of the Chief Court of Punjab not affected where the District Magistrate purports to act under authority of rules framed under this Act, while he has no such power, 21 P.R. 1886, Cr.; power of High Court to interfere in revision preserved where Magistrate act without jurisdiction, 41 C. 400; the High Court has no power to interfere in extradition orders passed by Political Agents, 36 P.W.R. 1908, Cr.=9 Cr. L.J. 3=3 P.R. 1909, Cr.; 43 C. 793; Sessions Judge is competent to alter charge for which accused was extradited, 17 B. 369; see, also, Rat. Un. Cr. C. 773; when the extradition of an accused is being demanded, he can resist an order only by showing that he committed only a Political offence. *In re Arton*, 1 Q.B. 108. (b) There is no necessity for enquiry by a British Court before a warrant is issued by Political Agent under this section, 7 Bom. L.R. 463=2 Cr. L.J. 439; the Magistrate has no authority to question the discretion of Political Agent in issuing a warrant under this section, 5 O.O. 55; a British Indian Magistrate has no power to admit to bail a person arrested under warrant under this section, 20 Bom. L.R. 1009=4 Bom. Cr. Cas. 304. (c) Where an accused is arrested illegally, he has a right to insist upon the illegality and upon the legal consequences of such procedure, 7 Bur. 83; trial after illegal arrest, illegal, 7 Bur. 83; property stolen out of British India received in British India, 14 P.R. 1878, Cr.

(3) The provisions of the Code of Criminal Procedure for the time

Proclamation and attachment in case of persons absconding.

being in force in relation to proclamation and attachment in the case of persons absconding shall, with any necessary modifications, apply where any warrant has been received by a District Magistrate [1] or Chief

Presidency Magistrate [1] under this section as if the warrant had been issued by himself.

8. (1) Where a Political Agent has directed by endorsement on any

Release on giving security.

such warrant that the person for whose arrest it is issued may be released (a) on executing a bond with

sufficient sureties for his attendance before a person or authority indicated in this behalf in the warrant at a specified time and place, the Magistrate to whom the warrant is addressed shall on such security being given release such person from custody.

(2) Where security is taken under this section,

Magistrate to retain bond.

the Magistrate shall certify the fact to the Political Agent who issued the warrant, and shall retain the bond.

(3) If the person bound by any such bond does not appear at the time and place specified, the Magistrate may,

Re-arrest in case of default.

on being satisfied as to his default, issue a warrant directing that he be re-arrested and handed over to

any person authorized by the Political Agent to take him into custody.

(4) In the case of any bond executed under this section, the Magis-

trate may exercise the powers conferred by the Code of Criminal Procedure for the time being in force in relation to taking a deposit in lieu of the execution of a bond and with respect to the forfeiture of bonds and the discharge of sureties.

trate may exercise the powers conferred by the Code of Criminal Procedure for the time being in force in relation to taking a deposit in lieu of the execution of a bond and with respect to the forfeiture of bonds and the discharge of sureties.

[1] 8-A. Notwithstanding anything contained in section 7, sub-section (2) or in section 8, when an accused person

Power to report case for orders of Local Government.

arrested in accordance with the provisions of section 7 is produced before the District Magistrate or Chief

Presidency Magistrate, as the case may be, and the statement (if any) of such accused person has been recorded, such Magistrate may, if he thinks fit, before proceeding further report the case to the Local Government and, pending the receipt of orders on such report, may detain such accused person in custody or release him on his executing a bond with sufficient sureties for his attendance when required.

9. Where a requisition is made to the Government of India or to any

Requisitions by States not being Foreign States.

Local Government by or on behalf of any State not being a Foreign State, for the surrender of any person accused of having committed an offence in the territories of such State, such requisition shall (except

in so far as relates to the taking of evidence to show that the offence is

Leg. Changes :—[1] Added by Act I of 1913.

Case-law :—(a) A Magistrate has no authority to release on bail without the endorsement of the Political Agent, 7 O.L.J. 171=7 Cr. L.J. 198=12 C.W.N. 602; 33 C. 1032=4 Cr. L.J. 366.

of a political character or is not an extradition crime) be dealt with in accordance with the procedure prescribed by section 3 for requisitions made by the Government of any Foreign State as if it were a requisition made by any such Government under that section :

Provided that, if there is a Political Agent in or for any such State, the requisition shall be made through such Political Agent.

10. (1) If it appears to any Magistrate of the first class or any Magistrate empowered by the Local Government in this behalf that a person within the local limits of his jurisdiction is accused or suspected of having committed an offence in any State not being a Foreign State and that such person may lawfully be surrendered to such State, or that a warrant may be issued for his arrest under section 7, the Magistrate ^(a) may, if he thinks fit, issue a warrant for the arrest of such person on such information or complaint and on such evidence as would, in his opinion, justify the issue of a warrant if the offence had been committed within the local limits of his jurisdiction.

Power to Magistrates to issue warrants of arrest in certain cases.

(2) The Magistrate shall forthwith report the issue of a warrant under this section, if the offence appears or is alleged to have been committed in the territories of a State for which there is a Political Agent, to such Political Agent and in other cases to the Local Government.

Issue of warrant to be reported forthwith.

(3) A person arrested on a warrant issued under this section shall not, without the special sanction of the Local Government, be detained more than two months, unless within such period the Magistrate receives an order made with reference to such person in accordance with the procedure prescribed by section 9, or a warrant for the arrest of such person under section 7.

Limit of time of detention of person arrested.

(4) In the case of a person arrested or detained under this section, the provisions of the Code of Criminal Procedure for the time being in force relating to bail shall apply in the same manner as if such person were accused of committing in British India the offence with which he is charged.

Bail.

11. (1) A person accused of an offence committed in British India, not being the offence for which his surrender is asked, or undergoing sentence under any conviction in British India, shall not be surrendered in compliance with a warrant issued by a Political Agent under section 7 or a requisition made by or on behalf of any State not being a Foreign State under section 9, except on the condition that such person be re-surrendered to the Government of India or the Local Government, as the case may be, on the termination of his trial for the offence for which his surrender has been asked :

Surrender of person accused of, or undergoing sentence for, offence in British India.

Provided that no such condition shall be deemed to prevent or postpone the execution of a sentence of death lawfully passed.

Case-law :—(a) The scope of this section, 8 Bom. L.R. 507=4 Cr. L.J. 49.

(2) On the surrender of a person undergoing sentence under a conviction in British India, his sentence shall be deemed to be suspended until the date of his re-surrender, when it shall revive and have effect for the portion thereof which was unexpired at the time of his surrender.

Suspension of sentence on surrender.

12. The provisions of this Chapter with reference to accused persons shall, with any necessary modifications, apply to the case of a person who, having been convicted of an offence in the territories of any State not being a Foreign State, has escaped into or is in British India before his sentence has expired.

Application of Chapter to convicted persons.

13. Every person who is accused or convicted of abetting or attempting to commit any offence shall be deemed, for the purposes of this Chapter, to be accused or convicted of having committed such offence, and shall be liable to be arrested and surrendered accordingly.

Abetment and attempt.

14. (a) It shall be lawful for any person to whom a warrant is directed in pursuance of the provisions of this Chapter, to receive, hold in custody and convey the person mentioned in the warrant, to the place named in the warrant, and, if such person escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be re-taken as a person accused of an offence against the law of British India may be re-taken upon an escape.

Lawfulness of custody and re-taking under warrant issued under Chapter.

15. The Government of India or the Local Government may, by order, stay any proceedings taken under this Chapter, and may direct any warrant issued under this Chapter to be cancelled, and the person for whose arrest such warrant has been issued to be discharged.

Power of Government to stay proceedings and discharge persons in custody.

16. The provisions of this Chapter shall apply to an offence or to an extradition offence, as the case may be, committed before the passing of this Act, and to an offence in respect of which a Court of British India has concurrent jurisdiction.

Application of Chapter to offences committed before its commencement.

17. (1) In any proceedings under this Chapter, exhibits and depositions (b) (whether received or taken in the presence of the person against whom they are used or not) (c) and copies thereof, and official certificates of facts and judicial documents stating facts, may, if duly authenticated, be received as evidence.

Receipt in evidence of exhibits, depositions and other documents.

Case-law :—(a) High Court has no power to transfer inquiry under this section from one Magistrate to another, 38 C. 550. (b) Depositions taken by British Consul at Zanzibar were held admissible before the Bombay High Court, 3 B. 334 (c) It would be desirable that Magistrates should enquire in the presence of the accused, 7 Bom. L.R. 463—2 Cr. L.J. 439.

(2) Warrants, depositions or statements on oath which purport to have been issued, received or taken by any Court of justice outside British India, or copies thereof, and certificates of, or judicial documents stating the fact of, conviction before any such Court, shall be deemed duly authenticated,—

Authentication of the same.

(a) if the warrant purports to be signed by a Judge, Magistrate or officer of the State where the same was issued or acting in or for such State ;

(b) if the depositions or statements or copies thereof purport to be certified, under the hand of a Judge, Magistrate or officer of the State where the same were taken, or acting in or for such State, to be the original depositions or statements or to be true copies thereof, as the case may require ;

(c) if the certificate of, or judicial document stating the fact of, a conviction purports to be certified by a Judge, Magistrate or officer of the State where the conviction took place or acting in or for such State :

(d) if the warrants, depositions, statements, copies, certificates and judicial documents, as the case may be, are authenticated by the oath of some witness or by the official seal of a minister of the State where the same were respectively issued, taken or given.

Definition of "warrant."

(3) For the purposes of this section, "warrant" includes any judicial document authorizing the arrest of any person accused or convicted of an offence.

18. Nothing in this Chapter shall derogate from the provisions of any treaty (a) for the extradition of offenders, and the procedure provided by any such treaty shall be followed in any case to which it applies, and the provisions of this Act shall be modified accordingly.

Chapter not to derogate from treaties.

Case-law :—(a) Trial of accused without certificate from Political Agent, illegal, 24 B. 287=1 Bom. L. R. 678; 19 A. 109; 2 Weir 143; effect of want of certificate of Political Agent, 13 M. 423; if there is no Political Agent, local Government may sanction trial, 24 B. 287; see also 13 B. 147; charge specified in the Political Agent's certificate may be amended by Sessions Judge, Rat. Un. Cr. C. 773; trial of Native Indian subjects for offence outside British India, 13 B. 147; Rat. Un. Cr. C. 97; trial of British subjects in British Courts, for offences committed in an independent territory, 29 P. R. 1878 (Cr.); trial of Native Indian subject for offence committed in Native State, 6 B. 622; British Courts have no jurisdiction to try foreigner for offences committed beyond British dominions, 10 B.H.C. 356; 7 M.I.A. 72; 20 L.J.M.C. 164; see also 1 P.R. 1901 (Cr.); 37 P.R. 1881 (Cr.); 7 M. 354; 10 M. 21; 2 P.L.R. 473; every country has jurisdiction to try crimes committed within its dominions, to whatever nation offender may belong, *Reg v. Gans*, 9 Q.B.D. 93; abetment in foreign territory of offence in British India, British Indian Courts have no jurisdiction, 10 B.H.C. 356; 20 P.R. 1878; punishment to follow the law under which the charge is preferred, 1 B.L.R. (Cr.) 1; interpretation of term 'Native Indian subject,' 1 P.R. 1885 (Cr.); 16 B. 178; see also 22 P.R. 1883 (Cr.); extradition to be regulated according to terms of treaty, L.R. 5 P.C. 198; extradition against terms of treaty, invalid, *Reg v. Wilson*, 3 Q.B.D. 42; cheating is an extradition offence, though not mentioned in treaty with the Hyderabad State, 20 Bom. L.R. 1009=4 Bom. Cr. Cas. 304; jurisdiction between different states is founded on treaty, S. C. 2 Moo. P.C. (N.S.) 181; L.R. 5 P.C. 189; *In re Galway*, 1 Q.B. 230; *Re Windsor*, 34 L.J.M.C. 163; *Re Bellesmeire*, 2 Q.B. 122; jurisdiction of Governor General of India outside the limits of British India, 24 I.A. 137=25 O. 20=2 C.W.N. 1 (P.C.);

CHAPTER IV.

RENDITION OF FUGITIVE OFFENDERS IN HIS MAJESTY'S DOMINIONS.

19. For the purpose of applying and carrying into effect in British India the provisions of the Fugitive Offenders Act,^(a) 1881, the following provisions are hereby made:—

Application of Fugitive Offenders Act, 1881.

^{44 & 45}
Vict., c. 69.

- (a) the powers conferred on "Governors" of British possessions may be exercised by any Local Government:
- (b) the powers conferred on a "Superior Court" may be exercised by any Judge of a High Court:
- (c) the powers conferred on a "Magistrate" may be exercised by any Magistrate of the first class or by any Magistrate empowered by the Local Government in that behalf: and
- (d) the offences committed in British India to which the Act applies, are piracy^(c), treason and any offence punishable under the Indian Penal Code with rigorous imprisonment for a term XLV of 1860 of twelve months or more or with any greater punishment.

CHAPTER V.

OFFENCES COMMITTED AT SEA.

20. Where the Government of any State outside India makes a requisition for the surrender of a person accused of an offence committed on board any vessel on the high seas (d) which comes into any port of British India, the Local Government and any Magistrate having jurisdiction in such port and authorized by the Local Government in this behalf may exercise the powers conferred by this Act.

Requisition for surrender in case of offence committed at sea.

Case-law—(Continued).

British Courts have no jurisdiction to try offence committed outside British India, without certificate from Political Agent, 5 M. 23; a Justice of the Peace in Mysore, has no authority to commit European subjects for trial to any Court other than the High Court of Madras, 5 M. 33; Justice of the Peace for Bangalore, is a Magistrate of the first class, subordinate to the High Court of Madras, 12 M. 39; Justice of the Peace for Mysore has power to try or to commit for trial, an European British subject to the High Court of Madras for offending against the Law of Mysore, 26 M. 607; arrest of a subject of a Native State in the Native State for offence committed in British India, legal, 1 P.R. 1896, Cr.; extradition in non-extraditable offence, illegal, 21 T.L.R. 85; to what extent can a criminal process be executed in Nizam's territories, 25 C. 90=24 I. A. 137=2 C.W.N. 1 (P.C.); right and power of control of British Government over Native States, 33 C. 219 (P.C.)=10 C.W.N. 361=16 M.L.J. 115=8 Bom. L.R. 129=3 A.L.J. 250=1 M.L.T. 115=33 I.A. 1=3 C.L.J. 395; District Magistrate of Mysore, not being a Justice of the Peace and also a European British subject, cannot try a European British subject; he can apprehend and bind him over to appear before competent tribunals, 5 Mys. Rep. 281.

(a) Warrant for arrest of fugitive offender, valid, *Reg v. Souter*, 8 Bom. Cr. 13. (b) As to jurisdiction of Magistrate, see 8 M.L.T. 352. (c) Piracy, the seizure of ship when amounts to, L.R. 5 P.C. 180; piracy means sea-robbery, 13 State Trials 454. (d) Admiralty jurisdiction ceases when the ship lies within enclosed dock, *United States v. Hamilton*, 1 Mason 152; persons charged with crimes on high seas, can be proceeded against in the Courts in British India, but they should be punished according to English law, 1 B.H.O.R. 99, Cr.; 1 B.L.R. 1; British Indian Courts have jurisdiction to try offence committed either on high seas or within 3 miles

CHAPTER VI.

EXECUTION OF COMMISSIONS ISSUED BY CRIMINAL COURTS OUTSIDE BRITISH INDIA.

21. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in any country or place outside British India in like manner as it may be obtained in any civil matter under the provisions of the Code of Civil Procedure for the time being in force with respect to commissions, and the provisions of that Code relating thereto shall be construed as if the term "suit" included a criminal proceeding:

Provided that this section shall not apply when the evidence is required for a court or tribunal in any State outside India other than a British Court and the offence is of a political character.

CHAPTER VII.

SUPPLEMENTAL.

22. (1) The Governor General in Council may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the removal of prisoners accused or in custody under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them ;
- (b) the seizure and the disposition of any property which is the subject of, or required for proof of, any alleged offence to which this Act applies ;
- (c) the pursuit and arrest in British India, by officers of the Government or other persons authorized in this behalf, of persons accused of offences committed elsewhere ; and
- (d) the procedure and practice to be observed in extradition proceedings.

(3) Rules made under this section shall be published in the Gazette of India and shall thereupon have effect as if enacted by this Act.

Case law—(Concluded).

of the coast, 14 B. 227 ; jurisdiction of Admiral on English ship, *Reg v. Anderson*, L.R. 1 C.O. 161 ; *Reg v. Carr*, 10 Q.B.D. 76 ; *Reg v. Allen*, 1 Mood. C.O. 494 ; jurisdiction of Admiral, when ceases, 1 Hale P.O. 17 ; 2 East P. C. 803 ; the Indian Penal Code not applicable for offences committed on high seas, i.e., more than three miles from the shore, 7 B. H.C.C.C. 89 ; the Code of Criminal Procedure is applicable for conducting a trial for an offence committed on high seas, 21 C. 782 ; 16 C. 238 ; the Indian Penal Code applicable for offences committed on the sea within three miles of the shore, 8 B.H.C.C.O. 67 ; Presidency Magistrate has authority to commit an accused for committing offence on a British ship on high seas, 3 Bom. L. R. 253 ; 25 B. 636 ; the territorial jurisdiction over merchant ship on high seas, 7 Crouch X 144 ; what is piracy *jure gentium*, 5 Wheaton 144 ; 5 Wheaton 184 ; jurisdiction of British Courts over piracy by foreigner, *United States v. Kessler*, Bald 15 ; *The Louis*, 2 Dodson Adm. 239.

(a) See 14 Bom. L. R. 177 as to issue of certificate by Political agent on warrant issued by Native States.

23. Notwithstanding anything in the Code of Criminal Procedure, 1898, any person arrested without an order from a V of 1896. Detention of persons arrested under section 54, clause seventhly, Act V, 1898. Magistrate and without a warrant, in pursuance of the provisions of section 54, clause seventhly, of the said Code, may, under the orders of a Magistrate within the local limits of whose jurisdiction such arrest was made, be detained in the same manner and subject to the same restrictions as a person arrested on a warrant issued by such Magistrate under section 10.

[1] 24.

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THE FIRST SCHEDULE.

EXTRADITION OFFENCES.

[See section 2, clause (b), and Chapter III (*Surrender of Fugitive Criminals in case of States other than Foreign States*).]

[The sections referred to are the sections of the Indian Penal Code.]

Frauds upon creditors (section 206).

Resistance to arrest (section 224).

Offences relating to coin and stamps (sections 230 to 263-A).

Culpable homicide (sections 299 to 304).

Attempt to murder (section 307).

Thagi (sections 310, 311).

Causing miscarriage, and abandonment of child (sections 312 to 317).

Causing hurt (sections 323 to 333).

Wrongful confinement (sections 347, 348).

Kidnapping and slavery (sections 360 to 373).

Rape and unnatural offences (sections 375 to 377).

Theft, extortion, robbery, etc. (sections 378 to 414).

Cheating (sections 415 to 420).

Fraudulent deeds, etc. (sections 421 to 424).

Mischief (sections 425 to 440).

Lurking house-trespass (sections 443, 444. [2])

Forgery, using forged documents, etc. (sections 463 to 477-A).

Desertion from any body of Imperial Service Troops.

Piracy by law of nations.

Sinking or destroying a vessel at sea or attempting or conspiring to do so.

Assault on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.

Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

Any offence against any section of the Indian Penal Code or XLV of 1860, against any other law which may, from time to time, be specified by the Governor General in Council by notification in the Gazette of India either generally for all States or specially for any one or more States.

Leg. Changes:—[1] Repealed by Act X of 1914. [2] The figure "444" was substituted for figure "446" by Act X of 1914.

THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

(See section 24.)

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THE INDIAN FACTORIES ACT, 1911.

(ACT XII OF 1911.)

[Passed on the 24th March, 1911.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1881	XV	Indian Factories ...	Rep. in pt., and Am., Act XI of 1891.
1891	XI	Do.	Rep. Act XII of 1911.
1911	XII	Indian Factories ...	Do. Rep. in pt., Act X of 1914.

An Act to consolidate and amend the law regulating labour in Factories.

WHEREAS it is expedient to consolidate and amend the law regulating labour in factories ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title, commencement and extent.

1. (1) This Act may be called the Indian Factories Act, 1911.

(2) It shall come into force on the first day of July 1912 ; and

(3) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

"Child."

(1) "child" means a person who is under the age of fourteen years :

"Employed."

(2) a person who works in a factory, whether for wages or not,—

(a) in a manufacturing process or handicraft, or

(b) in cleaning any part of the factory used for any manufacturing process or handicraft, or

(c) in cleaning or oiling any part of the machinery, or

(d) in any other kind of work whatsoever, incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein,

shall be deemed to be employed therein :

Leg. Changes :—[1] Repealed by Act X of 1914.

Explanation.—The term "manufacturing process" shall be deemed to include the baling of any material for transport :

(3) "factory" (a) means any premises wherein, or within the precincts of which, steam, water or other mechanical power or electrical power is used in aid of any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, for transport or for sale any article or part of an article :

"Inspector."

(4) "Inspector" includes an additional inspector :

(5) "mill-gearing" includes every shaft, whether upright, oblique or horizontal, and every wheel, drum, pulley, rope, chain, wire, driving strap or band by which the motion of the first moving power is communicated to any machine appertaining to any manufacturing process :

"Occupier."

(6) "occupier" includes a managing agent or other person authorised to represent the occupier :

"Prescribed."

(7) "prescribed" means prescribed by this Act or by rules made thereunder :

(8) "system of shifts" means a system of relays in which the time of the beginning and ending of the period or periods of the employment of each person is fixed for each relay :

(9) "textile factory" means a factory wherein is carried on any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, for transport or for sale cotton, wool, hair, silk, flax, hemp, jute, tow, china grass, cocoanut fibre or other like material, either separately or mixed together or mixed with any other material, or any fabric made thereof :

Provided that the term "textile factory" shall not be deemed to include the following factories, namely :—cloth-printing works, bleaching and dyeing works, lace ware-houses, paper mills, flax scutch mills, silk filatures, factories for ginning cotton, decorticating fibre, pressing cotton, jute or other fibre, rope works and hat works.

Application of Act. 3. (1) Nothing in the following Chapters shall apply to—

- (a) any mine subject to the operation of the Indian Mines Act, 1901, or
- (b) any electrical generating or transforming station, or
- (c) any indigo factory, or
- (d) any factory situated on and used solely for the purposes of a tea or coffee plantation, or
- (e) any factory wherein on no day in the year are more than forty-nine persons simultaneously employed :

VIII of 1901.

Case-law :—(a) To constitute a 'factory' certain processes must be carried on for not less than four months in the whole in any year, 1 N.L.R. 115.

Provided that the Local Government may, subject to the control of the Governor General in Council, by notification in the local official Gazette, apply to any factory or class of factories, wherein any specified number of persons, not being less than twenty, are on any day simultaneously employed, all or any of the provisions of this Act which would, save for clause (e) of this sub-section, have applied.

(2) The provisions of Chapters IV and V and sections 35 and 36 shall not, unless the Local Government by order in writing otherwise directs, apply to any person employed solely in any place within the precincts of a factory, not being a cotton reeling-room or winding-room in which place no steam, water or other mechanical power or electrical power is used in aid of the manufacturing process carried on in such factory, or in which such power is used solely for the purpose of moving or working any appliances in connection with the bringing or taking of any goods into or out of the factory.

CHAPTER II.

INSPECTORS AND CERTIFYING SURGEONS.

4. (1) The Local Government may, by notification in the local official Gazette, appoint such persons as it thinks fit to be inspectors of factories within such local limits as it may assign to them respectively.

(2) No person shall be appointed to be an inspector under sub-section (1), or, having been so appointed, shall continue to hold the office of inspector, who is or becomes directly or indirectly interested in a factory or in any process or business carried on therein or in any patent or machinery connected therewith.

(3) The District Magistrate shall be an inspector under this Act.

(4) The Local Government may also, by notification as aforesaid, and subject to the control of the Governor General in Council, appoint such public officers as it thinks fit to be additional inspectors for all or any of the purposes of this Act within such local limits as it may assign to them respectively.

(5) In any area where there are more inspectors than one, the Local Government may, by notification as aforesaid, declare the powers which such inspectors shall respectively exercise, and the inspector to whom the prescribed notices are to be sent.

(6) Every inspector shall be deemed to be a public servant within XLV of 1860. the meaning of the Indian Penal Code, and shall be officially subordinate to such authority as the Local Government may indicate in this behalf.

5. Subject to any rules in this behalf, an inspector may, within the local limits for which he is appointed,—

(a) enter, with such assistants (if any) as he thinks fit, any place which is, or which he has reason to believe to be, used as a factory :

- (b) make such examination of the premises and machinery and of any prescribed registers, and take on the spot or otherwise such evidence of any persons as he may deem necessary for carrying out the purposes of this Act; and
- (c) exercise such other powers as may be necessary for carrying out the purposes of this Act :

Provided that no one shall be required under this section to answer any question or give any evidence tending to criminate himself.

6. The Local Government may appoint such qualified medical practitioners as it thinks fit to be certifying surgeons for the purposes of this Act within such local limits as it may assign to them respectively.

7. (1) A certifying surgeon shall, at the request of any person desirous of being employed in a factory situated within the local limits for which he is appointed, or of the parent or guardian of such person, or of the manager of the factory in which such person desires to be employed, examine such person and grant him a certificate in the prescribed form, stating his age, as nearly as it can be ascertained from such examination, and whether he is fit for employment in a factory.

(2) Where a certifying surgeon refuses to certify that a person is fit for employment in a factory, he shall, if required by such person, or his parent or guardian, or the manager of the factory in which such person desires to be employed, state in writing his reasons for such refusal.

8. A certifying surgeon may authorize any person practising medicine or surgery to exercise the functions assigned to him by section 7, and may revoke such authority :

Provided that no certificate granted under this section shall, unless confirmed, on personal examination of the person named therein, by the certifying surgeon who conferred the authority, be valid after the first date subsequent to the grant thereof on which such certifying surgeon visits the factory in which the person named therein is employed.

CHAPTER III.

HEALTH AND SAFETY.

9. The following provisions shall apply to every factory :—

- (a) it shall be kept clean, and free from effluvia arising from any drain, privy or other nuisance ;
- (b) it shall not be so overcrowded while work is carried on therein as to be dangerous or injurious to the health of the persons employed therein ;
- (c) it shall be ventilated in such a manner as to render harmless, as far as practicable any gases, vapours, dust or other impurities generated in the course of the work carried on therein that may be injurious to health.

10. If in a factory, in which any process is carried on by which dust or other impurity is generated and inhaled by the workers to an injurious extent, it appears to the inspector that such inhalation could be to a great extent prevented by the use of a fan or other mechanical means, the inspector may serve on the manager of the factory an order in writing, directing that a fan or other mechanical means of a proper construction for preventing such inhalation be provided, maintained and used before a specified date.

Provision as to ventilation by fans in certain factories.

Lighting.

11. (1) Every factory shall be sufficiently lighted.

(2) In the case of any factory, which is not in the opinion of the inspector so lighted, the inspector may serve on the manager of the factory an order in writing, specifying the measures which he considers necessary for the attainment of a sufficient standard of lighting, and requiring him to carry them out before a specified date.

12. (1) In any factory in which humidity of the atmosphere is produced by artificial means, the water used for the purpose of producing humidity shall be taken either from a public supply of drinking water or from some other source of water ordinarily used for drinking, or shall be effectively purified before being used for the purpose of producing humidity.

Purity of water used for humidifying.

(2) In the case of any factory in which any water required under sub-section (1) to be effectively purified is not in the opinion of the inspector so purified, the inspector may serve on the manager of the factory an order in writing specifying the measures which he considers necessary for effectively purifying the water and requiring him to carry them out before a specified date.

13. Every factory shall be provided with sufficient and suitable latrine accommodation, and if the Local Government so requires, with separate urinal accommodation for the persons employed in the factory :

Provision of latrines and urinal accommodation.

Provided that the inspector may, subject to such conditions as the Local Government may lay down in this behalf, by an order in writing exempt any factory from the provisions of this section.

14. In every factory there shall be maintained a sufficient and suitable supply of water fit for drinking for the use of the persons employed in the factory.

Water-supply.

15. In every factory, the construction of which is commenced after the commencement of this Act, the doors of each room in which more than thirty persons are employed shall, except in the case of sliding doors, be constructed so as to open outwards.

Doors of factory to open outwards.

16. (1) Every factory shall be provided with such means of escape in case of fire for the persons employed therein as can reasonably be required in the circumstances of each case.

Provision of means for escape in case of fire.

(2) In the case of any factory which is not in the opinion of the inspector so provided, the inspector may serve on the manager of the factory an order in writing, specifying the measures which he considers necessary for providing such means of escape, and requiring him to carry them out before a specified date.

17. No person shall smoke, or use a naked light or cause or permit any such light to be used, in the immediate vicinity of any inflammable material in any factory.

Precautions against fire.

18. (1) (a) Every fly-wheel directly connected with a steam-engine, water-wheel or other mechanical power or electrical power in any part of the factory and every part of any water-wheel or engine worked by any such power,

Fencing.

(b) every hoist or teagle and every hoist-well, trap-door or other similar opening near which any person is liable to pass or be employed, and

(c) every part of the machinery which the Local Government may by rule require to be kept fenced,

shall be securely fenced.

(2) If in any factory there is any other part of the machinery or mill-gearing which may in the opinion of the inspector be dangerous if left unfenced, the inspector may serve on the manager of the factory an order in writing ^(a), specifying the measures which he considers necessary for fencing such part in order to remove the danger, and requiring him to carry them out before a specified date.

(3) All fencing must be constantly maintained in an efficient state while the parts required to be fenced are in motion or use, except where they are under repair or are under examination in connection with repair or are necessarily exposed for the purpose of cleaning or lubricating or for altering the gearing or arrangements of the parts of the machinery.

(4) Such provision as may be prescribed shall be made for the protection from danger of persons employed in attending to the machinery or boilers of any factory.

19. No woman or child shall be allowed to clean any part of the mill-gearing or machinery of a factory while the same is in motion by the action of steam, water or other mechanical power or electrical power, as the case may be, or to work between the fixed and traversing parts of any self-acting machine while such machine is in motion by the action of any power above described.

Prohibition of employment of women and children in certain dangerous work.

Case-law :—(a) Order or notice by inspector not compulsory before the person who has not conformed to the rules made under the Act, can be charged for any offence under it, 12 Bom. L.R. 225 ; 9 M.L.T. (Sup. (b) 17.

Prohibition of employment of women and children where cotton-openers are at work.

20. No woman or child shall be employed in the part of the factory for pressing cotton in which a cotton-opener is at work :

Provided that, if the feed-end of a cotton-opener is in a room separated from the delivery-end by a partition extending from the floor to the roof, women and children may be employed in the room in which the feed-end is situated.

CHAPTER IV.

HOURS OF EMPLOYMENT AND HOLIDAYS.

21. (1) In every factory there shall be fixed for each working day, at intervals not exceeding six hours, periods of not less than half an hour, during which all work shall be discontinued.

- (2) Nothing in sub-section (1) shall apply to—
- (a) any work performed by any person while employed in accordance with a system of shifts approved by the inspector, or
 - (b) the work of sizing, calendering, finishing, sewing or tailoring in textile factories, or in cloth-printing works, or in bleaching or dyeing works, or
 - (c) work on urgent repairs executed in railway or tramway workshops or running sheds, or in engineering works or ship-repairing works, or
 - (d) any work mentioned in Part A or in Part B of Schedule I, or
 - (e) the factories mentioned in Part C of the said Schedule.
- (3) Where it is proved to the satisfaction of the Local Government—
- (a) that any class of work not specified in Part A of Schedule I is of an urgent nature or is such as in the interests of efficiency is commonly performed while the main manufacturing process of the factory is discontinued, or
 - (b) that there is in any class of factories not specified in Part B of the said Schedule any work which necessitates continuous production for technical reasons, or
 - (c) that any class of factories not specified in Part C of the said Schedule requires, by reason of the exigencies or special circumstances of the trade carried on therein, an uninterrupted working day,

the Local Government may, subject to the control of the Governor General in Council, by notification in the local official Gazette, exempt,—

in case (a), such class of work,

in case (b), work of the nature described in such class of factories,

in case (c), such class of factories,

from the provisions of sub-section (1) on such conditions, if any, as it may impose.

Weekly holiday. 22. (1) No person shall be employed in any factory on a Sunday, unless—

- (a) he has had, or will have, a holiday for a whole day on one of the three days immediately preceding or succeeding the Sunday, and
- (b) the manager of the factory has previous to the Sunday or the substituted day, whichever is earlier, given notice to the inspector of his intention so to employ the said person and of the day which is to be substituted and has at the same time affixed a notice to the same effect in the place mentioned in section 36.

(2) Nothing in sub-section (1) shall apply to work on urgent repairs executed in railway or tramway workshops or running sheds or in engineering works or ship-repairing works.

(3) Nothing in sub-section (1) shall apply to any person employed on any work specified in Part A of Schedule I or in Part A of Schedule II or to any factory specified in Part B of Schedule II.

(4) Where it is proved to the satisfaction of the Local Government—

- (a) that any class of work not specified in Part A of Schedule I is of an urgent nature or is such as in the interests of efficiency is commonly performed while the main manufacturing process of the factory is discontinued, or
- (b) that there is in any class of factories not specified in Part A of Schedule II any work which necessitates continuous production for technical reasons, or
- (c) that any class of factories not specified in Part B of Schedule II supplies the public with articles of prime necessity which must be made or supplied every day, or
- (d) that in any class of factories the work performed, by the exigencies of the trade or by its nature, cannot be carried on except at stated seasons, or at times dependent on the irregular action of natural forces,

the Local Government may, subject to the control of the Governor General in Council, by notification in the local official Gazette, exempt,—

in case (a), such class of work,

in case (b), work of the nature described in such class of factories, and

in cases (c) and (d), such class of factories,

from the provisions of sub-section (1), on such conditions, if any, as it may impose.

Employment of children. 23. With respect to the employment of children in factories the following provisions shall apply :—

- (a) no child shall be employed in any factory unless he is in possession of a certificate granted under section 7 or section 8 showing that he is not less than nine years of age and is fit for employment in a factory and while at work carries either the certificate itself or a token giving reference to such certificate;

- (b) no child shall be employed in any factory before half-past five o'clock in the morning or after seven o'clock in the evening
- (c) no child shall be employed in any factory for more than seven hours in any one day.

Employment of women. 24. With respect to the employment of women in factories the following provisions shall apply :—

- (a) no woman shall be employed in any factory before half-past five o'clock in the morning or after seven o'clock in the evening ;
- (b) no woman shall be employed in any factory for more than eleven hours in any one day.

Prohibition of employment of woman or child in two factories on same day.

25. No person shall employ, or permit to be employed, in any factory any woman or child whom he knows, or has reason to believe, to have already been employed on the same day in any other factory.

Hours of employment of women and children to be fixed.

26. The manager of a factory shall fix specified hours for the employment of each woman and child employed in such factory, and no woman or child shall be employed except during such hours.

Exception to provisions relating to employment of women. 27. Nothing in section 24 or section 26 shall apply to any woman in any factory for ginning or pressing cotton, in which such number of women are employed as are in the opinion of the inspector sufficient to make the hours of employment of each woman not more than eleven in any one day.

CHAPTER V.

SPECIAL PROVISIONS FOR TEXTILE FACTORIES.

Limitation of hours of work. 28. No person shall be employed in any textile factory for more than twelve hours in any one day.

Limits between which a person may be employed. 29. (1) No person shall be employed in any textile factory before half-past five o'clock in the morning or after seven o'clock in the evening.

(2) Nothing in sub-section (1) shall apply to any person while employed in accordance with a system of shifts approved by the inspector.

Exceptions from sections 28 and 29. 30. (1) Nothing in section 28 or section 29 shall apply to—

- (a) the work of calendering, finishing, sewing or tailoring, or
- (b) the work of cloth-printing, bleaching or dyeing, or
- (c) any work specified in Part A of Schedule I.

(2) Where it is proved to the satisfaction of the Local Government that any work not specified in Part A of Schedule I is of an urgent nature, or is such as in the interests of efficiency is commonly performed while the main manufacturing process of the factory is discontinued, the

Local Government may, subject to the control of the Governor General in Council, by notification in the local official Gazette, exempt any person employed on such work from the operation of section 28 or section 29 on such conditions, if any, as it may impose.

Limit of use of machinery. 31. (1) The period for which mechanical power or electrical power is used in any textile factory shall not in any one day exceed twelve hours.

(2) Nothing in sub-section (1) shall apply to any mechanical power or electrical power while being solely used in aid of the work performed by any person employed in accordance with a system of shifts approved by the inspector.

(3) Nothing in sub-section (1) shall apply to any mechanical power or electrical power required in connection with any work specified in sub-section (1) of section 30 or in connection with any work which is exempted by the Local Government under sub-section (2) of the same section.

Limitation of hours of children. 32. No child shall be employed in any textile factory for more than six hours in any one day.

CHAPTER VI.

NOTICES AND REGISTERS.

Person occupying factory to give notice. 33. (1) Every person occupying a factory (a) shall,—

- (a) in the case of existing factories, within one month after the commencement of this Act, or
- (b) in the case of a factory which starts work after the commencement of this Act, within one month after he begins to occupy the factory,

send to the inspector a written notice containing—

- (i) the name of the factory and of the place where it is situate,
- (ii) the address to which he desires his letters to be directed,
- (iii) the nature of the work performed in such factory,
- (iv) the nature and amount of the moving power therein, and
- (v) the name of the person who shall be deemed to be the manager of the factory for the purposes of this Act:

Provided that in the case of a seasonal factory such notice shall be sent on or before the date of starting work for each season.

(2) If the manager of the factory is changed, the occupier shall send to the inspector, within seven days from the date on which the change is made, written notice of the change.

(3) During any period for which no person has been designated as manager of a factory under this section, the occupier shall himself be deemed to be the manager of the factory for the purposes of this Act.

Case-law :—(a) For meaning of 'occupier,' see Rat. Un. Cr. C. 902; 10 Bom. L.R. 38=7 Cr. L.J. 44; 'occupier' indicates the person who has the control of the factory, whether he is the owner, or only a lessee or a mortgagee with possession, because it is he who decides to work or close down the factory, 13 P.R. 1918, Cr.; see, also, 15 Bom. L.R. 328=14 Cr. L.J. 384=20 Ind. Cas. 144; but manager residing on premises is not an 'occupier,' 29 B. 428=7 Bom. L.R. 454=2 Cr. L.J. 428.

34. When any accident occurs in a factory causing death or bodily injury, whereby the person injured is prevented from returning to his work in the factory during the forty-eight hours next after the occurrence of the accident, the manager shall send notice of the accident to such authorities in such form and within such time as may be prescribed.

Notice to be given of accident.

35. In every factory there shall be kept, in the prescribed form, a register of the children (if any) employed in such factory, and of the nature of their respective employment.

Register of children (a).

36. (1) There shall be affixed in some conspicuous place near the main entrance of every factory, in English and in the language of the majority of the operatives in such factory, the prescribed abstracts of this Act and of the rules made thereunder, and also a notice containing the standing orders of the factory upon the following matters, namely :—

Affixing of abstract and notices.

- (a) the time of beginning and ending work on each day ;
- (b) the periods during which all work is discontinued under section 21 ;
- (c) the hours of beginning and ending work for each shift (if any) ; and
- (d) the hours of employment of women and children respectively, if not employed in shifts.

(2) A copy of the said notice shall be sent to the inspector [1] * * * within one month of commencing work.

(3) The said notice shall be correctly maintained and kept up to date, and intimation of any change therein shall be sent by the manager to the inspector within seven days.

(4) Nothing in this section, except in so far as it relates to affixing the prescribed abstracts of this Act and the rules made thereunder, shall apply to any seasonal factory.

CHAPTER VII.

RULES.

37. (1) Subject to the control of the Governor General in Council, the Local Government may make rules for the purpose of carrying into effect the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the inspection of factories ;

Leg. Changes :—[1] The words " within one month of the commencement of this Act, or, in the case of a factory which starts work after the commencement of this Act," were omitted by Act X of 1914.

Case-law :—(a) Responsibility of keeping the Register is personal and it cannot be got rid of by defence that it was delegated to another person, 11 Bom. L.R. 12=9 Cr. L.J. 160=1 Ind. Cas. 102.

- (b) the manner in which inspectors are to exercise the powers conferred on them by this Act ;
- (c) the duties to be performed by certifying surgeons ;
- (d) the form of the certificate prescribed by section 7, the grant of a duplicate in the event of loss of the original certificate, and the fee, if any, to be charged for such duplicate ;
- (e) the methods, including lime-washing, painting, varnishing and washing, to be adopted in order to secure cleanliness and freedom from effluvia ;
- (f) the proportion which the number of cubic feet of space in any room shall bear to the number of persons employed at one time therein ;
- (g) standards of ventilation, and the methods to be adopted in order to secure their observance ;
- (h) standards of latrine and urinal accommodation ;
- (i) standards of water-supply ;
- (j) the parts of the machinery to be kept fenced in accordance with section 18, sub-section (1), clause (c), and the provisions to be made for the protection from danger of persons employed in attending to the machinery or boilers ;
- (k) the form of the notice prescribed by section 34, and the time within which and the authorities to whom it shall be sent ;
- (l) the form of the register prescribed by section 35 ;
- (m) the abstracts of the Act and of the rules required by section 36 ;
- (n) the procedure to be followed in presenting and hearing appeals under this Act, including the appointment and remuneration of assessors ; and
- (o) the manner of service of notices and orders upon occupiers or managers of factories

38. The Governor General in Council may from time to time make rules requiring occupiers or managers of factories to furnish such returns, occasional or periodical, as may in his opinion be necessary for the effectual carrying out of this Act.

39. (1) The power to make rules conferred by section 37, except clauses (k), (l) and (m) of sub-section (2) thereof, and by section 38 is subject to the condition of the rules being made after previous publication.

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897, as that after which a draft of rules proposed to be made under sections 37 and 38 will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information. X of 1897.

40. Rules made under this Chapter shall be published in the local official Gazette or the Gazette of India, as the case may be, and shall thereupon have effect as if enacted in this Act.

CHAPTER VIII.

PENALTIES AND PROCEDURE.

Penalties.

41. If in any factory—

- (a) any person is employed or allowed to work contrary to any of the provisions of this Act (a);
- (b) any of the provisions of section 9 are not complied with ;
- (c) latrine or urinal accommodation in accordance with the provisions of section 13 is not provided ;
- (d) a supply of water for the persons employed is not maintained in accordance with the provisions of section 14 ;
- (e) any door is constructed in contravention of section 15 ;
- (f) any of the provisions of section 18, sub-sections (1), (3) and (4), regarding fencing and the protection from danger of persons employed in attending to the machinery or boilers are not complied with ;
- (g) any order of an inspector under section 10, section 11, section 12, section 16 or section 18 is not complied with ;
- (h) the register prescribed by section 35 is not kept up to date ;
- (i) any of the provisions of section 36 are not complied with ;
- (j) any notice or return required by this Act or by rules made thereunder to be furnished is not furnished (b) ;

the occupier (c) and manager shall be jointly and severally liable to a fine which may extend to two hundred rupees :

Provided that in cases where an appeal is allowed by section 50 no prosecution under clause (g) of this section shall be instituted until either the time prescribed by section 50 for the presentation of an appeal has expired or such appeal, if made, has been determined.

42. (1) Where the occupier or manager of a factory is charged with an offence against this Act, he shall be entitled upon complaint duly made by him to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge ; and if, after the commission of the offence has been proved, the occupier or manager of the factory proves to the satisfaction of the Court—

- (a) that he has used due diligence to enforce the execution of this Act, and
- (b) that the said other person committed the offence in question, without his knowledge, consent or connivance,

Case-law :—(a) Conviction illegal in the absence of definite evidence to show that a boy seven or eight years old was employed or allowed to work in contravention of the provisions of the Act, 17 A.L.J. 223. (b) Intentional omission to give information required by the form of notice prescribed by Government would render the person liable to punishment, L.B.R. 1898—1900, 407. (c) 'Occupier' indicates the person who has the control of the factory, whether he is the owner, or only a lessee or a mortgagee with possession, because it is he who decides to work or close down the factory, 13 P.R. 1918 (Cr.).

that other person shall be convicted of the offence and shall be liable to the like fine as if he were the occupier or manager, and the occupier or manager shall be discharged from any liability under this Act.

(2) When it is made to appear to the satisfaction of the inspector at any time prior to the institution of the proceedings—

- (a) that the occupier or manager of the factory has used all due diligence to enforce the execution of this Act, and
- (b) by what person the offence has been committed, and
- (c) that it has been committed without the knowledge, consent or connivance of the occupier or manager, and in contravention of his orders,

the inspector shall proceed against the person whom he believes to be the actual offender without first proceeding against the occupier or manager of the factory, and such person shall be liable to the like fine as if he were the occupier or manager.

Penalties for certain offences. **43.** Any person who—

- (a) wilfully obstructs an inspector in the exercise of any power under section 5, or fails to produce on demand by an inspector any registers or other documents kept in pursuance of this Act or the rules made thereunder, or conceals or prevents or attempts to prevent any person employed in a factory from appearing before or being examined by an inspector;
- (b) smokes, or uses a naked light, or causes or permits any such light to be used, in the immediate vicinity of any inflammable material in contravention of section 17; or
- (c) does or omits to do any other act prohibited or prescribed by this Act or any order or rule made thereunder;

shall be punishable with fine which may extend to two hundred rupees.

44. Any person who knowingly uses or attempts to use, as a certificate granted to himself under section 7 or section 8, a certificate granted to another person under either of those sections, or who, having procured such a certificate knowingly allows it to be used, or an attempt to use it to be made, by another person, shall be punishable with fine which may extend to twenty rupees.

Limit to penalty in case of repetition of offence. **45.** A person shall not be liable in respect of a repetition of the same kind of offence from day to day to any larger amount of fines than the highest fine fixed by this Act for the offence, except—

- (a) where the repetition of the offence occurs after a prosecution has been instituted in respect of the original offence, or
- (b) where the offence is one of employing or allowing to be employed two or more persons contrary to the provisions of this Act.

46. If a child over the age of six years is found inside any room or part of a factory in which room or part children are employed and in which any manufacturing process or work incidental to any manufacturing process is being carried on, he shall, until the contrary is proved, be deemed to be employed in the factory.

Presumption as to employment.

47. (1) When an act or omission would, if a person were under or over a certain age, be an offence punishable under this Act, and such person is in the opinion of the Court apparently under or over such age, it shall be on the accused to prove that such person is not under or over such age.

Evidence as to age.

(2) A declaration in writing by a certifying surgeon that he has personally examined a person employed in a factory and believes him to be under or over the age set forth in such declaration shall, for the purposes of this Act, be admissible as evidence of the age of that person.

48. (1) No prosecution under this Act, except a prosecution under section 43, clause (b), shall be instituted except by or with the previous sanction of the inspector.

Cognizance of offences.

(2) No Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class shall try any offence against this Act or any rule or order thereunder, other than an offence against section 43, clause (b).

49. No Court shall take cognizance of any offence against this Act or any rule or order thereunder, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

Limitation of prosecutions.

CHAPTER IX.

SUPPLEMENTAL PROVISIONS.

50. (1) Any person on whom an order under section 10, section 11, section 12, section 16 or section 18 has been served may, within fourteen days from the date of service of the order, appeal against such order to the Local Government or to such authority as it may appoint in this behalf, who may confirm, modify or reverse any such order.

Appeals.

(2) Where an inspector refuses to approve a system of shifts, he shall, if required by the manager of the factory, record his order of refusal with the reasons therefor, and the manager of the factory may, within fourteen days from the date of such order, appeal against it to the Local Government or to such authority as it may appoint in this behalf, who may confirm, modify or reverse any such order.

(3) In the case of any appeal under sub-section (1) the appellate authority may, and if so requested by the appellant in the petition of appeal shall, hear the appeal with the aid of two assessors, one of whom shall be appointed by the said authority and the other by such body representing the interest of the industry concerned as the Local Government may in this behalf prescribe:

Provided that if no assessor is appointed by such body within the prescribed period, or if the assessor so appointed fails to attend at the time and place fixed for the hearing of the appeal, the said authority may proceed to hear the appeal without the aid of such assessor, or, if it thinks fit, without the aid of any assessor.

51. (1) In respect of any area in which the hours of the day are not ordinarily reckoned- according to local mean time, the times and hours referred to in section 2, sub-section (8), section 26 and section 36 shall be reckoned according to the standard of time ordinarily observed in such area.

Special provision regarding computation of time.

(2) The Local Government may, by notification in the local official Gazette, direct that, for any specified area and during any specified months, for the morning and evening hours mentioned in section 23, clause (b), section 24, clause (a) and section 29, such one of the following sets of morning and evening hours, as it deems suitable, reckoned according to the standard of time ordinarily observed in such area, shall be substituted, namely :

five o'clock in the morning and half-past six o'clock in the evening ;
 six o'clock in the morning and half-past seven o'clock in the evening ;
 half-past six o'clock in the morning and eight o'clock in the evening ;
 seven o'clock in the morning and half-past eight o'clock in the evening.

52. In computing the hours referred to in section 23, clause (c), section 24, clause (b), section 28 and section 32, any interval by which work is interrupted for half an hour or more shall be excluded.

Computation of hours of employment.

53. The Local Government may, subject to the control of the Governor General in Council, by special order in writing, direct, with respect to any factory or class of factories, that different branches or departments of work carried on in the same factory shall for all or any of the purposes of this Act be treated as if they were separate factories.

Power to declare parts of a factory to be separate factories.

54. This Act shall apply to factories belonging to the Crown.

Application to Crown factories.

55. Notwithstanding anything in section 22, sub-section (1), any person may in the province of Burma be employed on Sunday for any time not exceeding four hours in cleaning the machinery and apparatus in a factory, provided that he has not worked in the factory later than two o'clock in the afternoon on the previous day.

Special provision for Burma for employment on Sunday.

56. In case of any public emergency, the Local Government may, by an order in writing, exempt any factory from this Act to such extent and during such period as it thinks fit.

Power to exempt from Act.

57. The Governor General in Council may, if he thinks fit, exercise any power which is by this Act conferred upon the Local Government.

Exercise of powers by Governor General in Council.

Protection to persons acting under Act.

58. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

XV of 1881.
XI of 1891.

Repeal and savings.

59. The Indian Factories Act, 1881, and the Indian Factories Act, 1891, are hereby repealed :

Provided that all appointments made and all certificates given under the said Acts shall be deemed to have been made or given under this Act.

SCHEDULE I.

(See sections 21, 22, 30.)

PART A.

[See sections 21 (2), (3) ; 22 (3) ; 30.]

WORK OF AN URGENT NATURE OR SUCH AS IN THE INTERESTS OF EFFICIENCY IS COMMONLY PERFORMED WHILE THE MAIN MANUFACTURING PROCESS OF THE FACTORY IS DISCONTINUED.

- (a) Work by the supervising staff, clerks, watchmen or messengers ;
- (b) work in the mechanic shop, the smithy or foundry, the boiler-house, the engine-room or power-house, or in connection with the mill-gearing, the electric driving or lighting apparatus, mechanical or electrical lifts, or the steam or water pipes or pumps ;
- (c) work on the cleaning of walls, ceilings or other portions of factory buildings, tanks, wells, humidifying or ventilating apparatus, tunnels, blowroom flues or line-shaft alleys or of galleries in ginning factories ;
- (d) work by persons engaged in oiling, examining or repairing or in supervising or aiding in the oiling, examination or repair of any machinery or other thing whatsoever which is necessary for the carrying on of the work in a factory.

Explanation.—Periodical cleaning is not included in the terms "examining" or "repairing ;"

- (e) work on the processes of packing, bundling or baling of finished articles or the receiving or despatching of goods.

PART B.

[See section 21 (2), (3).]

WORK NECESSITATING CONTINUOUS PRODUCTION FOR TECHNICAL REASONS IN THE FOLLOWING FACTORIES, NAMELY:—

Tanneries.
Sugar refineries.
Breweries.
Distilleries.
Oil refineries.
Oil mills.
Cement works.
Cloth-printing works.
Bleaching and dyeing works.
Carbonic acid gas works.
Chemical works.
Glass works.
Paper mills.

Shellac factories.

Potteries.

Blast furnaces, ore smelting works, or works for the manufacture of iron or steel or other metals.

PART C.

[See section 21 (2), (3).]

FACTORIES WHICH BY REASON OF THE EXIGENCIES OR THE SPECIAL CIRCUMSTANCES OF THE TRADE CARRIED ON THEREIN REQUIRE AN UNINTERRUPTED WORKING DAY, NAMELY :—

Flour mills.

Rice mills.

Letter-press printing works.

Dairies.

Bakeries.

Ice factories.

The mints.

Gas works.

Air-compressor stations.

Water-works or water-supply pumping stations.

SCHEDULE II.

(See section 24.)

PART A.

[See section 22 (3), (4).]

WORK NECESSITATING CONTINUOUS PRODUCTION FOR TECHNICAL REASONS IN THE FOLLOWING FACTORIES, NAMELY :—

Tanneries.

Sugar refineries.

Breweries.

Distilleries.

Oil refineries.

Cement works.

Carbonic acid gas works.

Chemical works.

Glass works.

Shellac factories

Potteries.

Blast furnaces, ore smelting works or works for the manufacture of iron or steel or other metals.

PART B.

[See section 22 (3), (4).]

FACTORIES WHICH SUPPLY THE PUBLIC WITH ARTICLES OF PRIME NECESSITY WHICH MUST BE MADE OR SUPPLIED EVERY DAY, NAMELY :—

Ice factories.

Dairies.

Bakeries.

Gas works.

Air-compressor stations.

Water-works or water-supply pumping stations.

**THE FEMALE INFANTICIDE PREVENTION
ACT, 1870.**

(ACT VIII OF 1870.)

[Passed on the 18th March, 1870.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1870	VIII	Female Infanticide Prevention.	Short title given, Act XIV of 1897. Am., locally, Bom. Act III of 1897.

An Act for the Prevention of the murder of Female infants.

WHEREAS the murder of female infants is believed to be commonly committed in certain parts of British India; and
Preamble. whereas it is necessary to make better provision for the prevention of the said offence; It is hereby enacted as follows:—

1. If it shall appear to the Local Government that the said offence is commonly committed in any district, or by any class, or family, or persons residing therein, the Local Government may, with the previous sanction of the Governor General of India in Council, declare by notification published in the official Gazette, and in such other manner as the Local Government shall direct, that measures for the prevention of such offence shall be taken under this Act, in such district, or in respect of such class, or family or persons.

The notification shall define the limits of such district, or shall specify the class, or family or persons to whom such notification is to be deemed to apply.

2. When such notification shall have been published as aforesaid, it shall be lawful for the Local Government, subject to the provisions of section 3, from time to time to make rules consistent with this Act for all or any of the following purposes:—

Power to make rules (a).

- (1) for making and maintaining registers of births, marriages and deaths occurring in such district, or in or among the class, family or persons to whom such notification has been made applicable; and for making, from time to time, a census of such persons, or of any other persons residing within such district;
- (2) for the entertainment of any police-force in excess of the ordinary fixed establishment of police, or for the entertainment

Case-law:—(a) Heads of family not bound under any of the rules to give information of departure of women from their families, 6 A. 380.

3. 6 ACT VIII OF 1870 (FEMALE INF. PRE.). Female Infanticide

of any officers or servants, for the purpose of preventing or detecting the murder of female infants, in such district, or in or among such class, family or persons or for carrying out any of the provisions of this Act :

- (3) for prescribing how and by whom information shall be given to the proper officers of all births, marriages and deaths occurring or about to occur in such district, or in or among such class, family or persons :
- (4) for the regulation and limitation of expenses incurred by any person to whom such notification applies on account of the celebration of marriage or of any ceremony or custom connected therewith :
- (5) for regulating the manner in which all or any of the expenses incurred in carrying into effect rules made under this section shall be recovered from all or any of the inhabitants of such district, or from the persons to whom such notification is applicable :
- (6) for defining the duties of any officer or servant appointed to carry out any rule made under this section.

3. No rule or alteration made under section 2 shall take effect until it shall have been confirmed by the Governor General of India in Council and published in the Gazette of India and also in the local Gazette.

Confirmation and publication of rules.

Copies of every such rule shall be affixed in such places, and shall be distributed in such manner, as the Local Government may direct.

4. Whoever disobeys any such rule shall, on conviction before any officer exercising the powers of a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Punishment for breach of rules.

5. Nothing in this Act, or in any rule made and published as aforesaid, shall prevent any person from being prosecuted and punished under any other law for any offence punishable under this Act: Provided that no person shall be punished twice for the same offence.

Saving of prosecutions under other laws.

6. If it appears to the Magistrate of the District that any person, to whom the notification mentioned in section 1 applies, neglects to make proper provision for the maintenance of any female child for whose maintenance he is legally responsible, and that the life or health of such child is thereby endangered, such Magistrate may, in his discretion, place the child under such supervision as he may think proper, and shall, if necessary, remove the child from the custody of such person.

Power to place neglected children under supervision.

The Magistrate of the District may order him to make a monthly allowance for the maintenance of the child at such monthly rate not exceeding fifty rupees as to such Magistrate shall seem reasonable, and, if such person wilfully neglects to comply with such order, such

Magistrate may, for every breach of the order, by warrant direct the amount due to be levied in manner provided by section 61 of the Code of Criminal Procedure.

Nothing in this section shall affect the powers of a Magistrate under section 316 of the same Code.

7. This Act shall, in the first instance, extend only to the North-Western Provinces, to the Punjab and to Oudh; but the Governor General of India in Council may by order extend it to any part of the territories (other than Oudh) under the immediate administration of the Government of India; and the Governor of Madras in Council, the Governor of Bombay in Council and the Lieutenant-Governor of Bengal may severally by order extend it to any part of the territories under their respective Governments.

Every order under this section made by the Governor General of India in Council shall be published in the Gazette of India. Every other order made under this section shall be published in the local official Gazette.

THE FISHERIES ACT, 1897.

(ACT IV OF 1897.)

[Passed on the 4th February, 1897.]

HISTORICAL MEMOIR.

Year.	No of Act.	Name of Act.	How affected.
1897	IV	Indian Fisheries ...	Rep. in pt., Act X of 1914.

An Act to provide for certain matters relating to Fisheries in British India.

WHEREAS it is expedient to provide for certain matters relating to fisheries in British India; It is hereby enacted as follows:—

Title. extent and commencement. 1. (1) This Act may be called the Indian Fisheries Act, 1897.

(2) It extends to the whole of British India, except Burma; [1] *

(3) [1] * * * *

2. Subject to the provisions of sections 8 and 10 of the General X of 1897. Act to be read as supplemental to other Fisheries Laws. Clauses Act, 1897, this Act shall be read as supplemental to any other enactment for the time being in force relating to fisheries in any part of British India except Burma.

Definitions. 3. In this Act, unless there is anything repugnant in the subject or context,—

(1) " fish " includes shell-fish :

Leg. Changes :—[1] Repealed by Act X of 1914.

(2) "fixed engine" means any net, cage, trap or other contrivance for taking fish, fixed in the soil or made stationary in any other way: and

(3) "private water" means water which is the exclusive property of any person, or in which any person has for the time being an exclusive right of fishery whether as owner, lessee or in any other capacity.

Explanation.—Water shall not cease to be "private water" within the meaning of this definition by reason only that other persons may have by custom a right of fishery therein.

4. (1) If any person uses any dynamite or other explosive substance in any water with intent thereby to catch or destroy any of the fish that may be therein, he shall be punishable with imprisonment for a term which may extend to two months, or with fine which may extend to two hundred rupees.

Destruction of fish by explosives in inland waters and on coasts.

(2) In sub-section (1) the word "water" includes the sea within a distance of one marine league of the sea-coast: and an offence committed under that sub-section in such sea may be tried, punished and in all respects dealt with as if it had been committed on the land abutting on such coast.

5. (1) If any person puts any poison, lime or noxious material into any water with intent thereby to catch or destroy any fish, he shall be punishable with imprisonment for a term which may extend to two months, or with fine which may extend to two hundred rupees.

Destruction of fish by poisoning of waters.

(2) The Local Government may, by notification in the official Gazette, suspend the operation of this section in any specified area, and may in like manner modify or cancel any such notification.

6. (1) The Local Government may make rules for the purposes hereinafter in this section mentioned, and may by a notification in the official Gazette apply all or any of such rules to such waters, not being private waters (a), as the Local Government may specify in the said notification.

Protection of fish in selected waters by rules of Local Government.

(2) The Local Government may also, by a like notification, apply such rules or any of them to any private water with the consent in writing of the owner thereof and of all persons having for the time being any exclusive right of fishery therein.

(3) Such rules may prohibit or regulate all or any of the following matters, that is to say:—

(a) the erection and use of fixed engines;

(b) the construction of weirs; and

(c) the dimension and kind of the nets to be used and the modes of using them.

(4) Such rules may also prohibit all fishing in any specified water for a period not exceeding two years.

Case-law :—(a) Section not applicable to 'private water,' 28 A. 204.

Foreigners**ACT III OF 1864 (FOREIGNERS).**

(5) In making any rule under this section the Local Government may—

(a) direct that a breach of it shall be punishable with fine which may extend to one hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to ten rupees for every day after the date of the first conviction during which the breach is proved to have been persisted in; and

(b) provide for—

(i) the seizure, forfeiture and removal of fixed engines erected, or used, or nets used, in contravention of the rule, and

(ii) the forfeiture of any fish taken by means of any such fixed engine or net.

(6) The power to make rules under this section is subject to the condition that they shall be made after previous publication.

7. (1) Any police-officer or other person specially empowered by the Local Government in this behalf, either by name or as holding any office, for the time being, may, without an order from a Magistrate and without warrant, arrest any person (a) committing in his view any offence punishable under section 4 or 5 or under any rule under section 6—

Arrest without
warrant for offences
under this Act.

(a) if the name and address of the person are unknown to him, and

(b) if the person declines to give his name and address, or if there is reason to doubt the accuracy of the name and address if given.

(2) A person arrested under this section may be detained until his name and address have been correctly ascertained:

Provided that no person so arrested shall be detained longer than may be necessary for bringing him before a Magistrate, except under the order of a Magistrate for his detention.

THE FOREIGNERS ACT, 1864.

(ACT III OF 1864.)

[Passed on the 12th February, 1864.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1857	XXXIII	Foreigners	Rep., Act VIII of 1868.
1859	XXVIII	Do.	Do.
1864	III	Do.	Rep. in pt., Act XII of 1876. Am., Act XII of 1891. Rep. in pt., Act X of 1914. Am., Act III of 1915.

Case-law:—(a) Lessee not liable for offences committed by sub-lessees, L.B.R. (1898-1900), 594.

An Act (a) to give the Government certain powers with respect to Foreigners.

Preamble. WHEREAS it is expedient to make provision to enable the Government to prevent the subjects of Foreign States from residing or sojourning in British India, or from passing through or travelling therein, without the consent of the Government ; It is enacted as follows :—

Interpretation. 1. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say :—

The words " British India " shall denote the territories which are or may become vested in Her Majesty by the Statute " British India." 21 and 22 Victoria, Chap. 106, entitled " An Act for the better Government of India":

the words " Local Government " shall denote the persons authorized to administer the executive government in any " Local Government." part of British India, or the chief executive officer of any part of British India under the immediate administration of the Governor General of India in Council, when such chief executive officer shall, by an order of the Governor General of India in Council published in the Gazette of India, be authorized to exercise the powers vested by this Act in a Local Government :

" Foreigner." the word " foreigner " shall denote a person,

[1](a) who is not a natural born British subject as defined in sub-sections (1) and (2) of section 1 of the British Nationality and Status of Aliens Act, 1914, or 4 & 5 Geo. V, c. 17.

(b) who has not been granted a certificate of naturalisation as a British subject under any law for the time being in force in British India :

Provided that any British subject who, under any law for the time being in force in British India, ceases to be a British subject, shall thereupon be deemed to be a foreigner.

the words " the Magistrate of the district " shall denote the chief " Magistrate of the district." officer charged with the executive administration of a district and exercising the powers of a Magistrate, by whatever designation the chief officer charged with the executive administration is styled, or, in the absence of such officer from the station at which his Court is usually held, the senior officer at the station exercising the powers of a Magistrate as defined in the Code of Criminal Procedure :

" Vessel." the word " vessel " shall include anything made for the conveyance by water of human beings or property :

Leg. Changes :—[1] Substituted by Act III of 1915.

Case-law :—(a) Act not *ultra vires*, 18 B. 636.

[1]*

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2. If a question shall arise whether any person alleged to be a foreigner and to be subject to the provisions of this Act is a foreigner or not, or is or is not subject to the provisions of this Act, the onus of proving that such person is not a foreigner, or is not subject to the provisions of this Act, shall lie upon such person.

3. The Governor General of India in Council may, by writing, order any foreigner to remove himself from British India, or to remove himself therefrom by a particular route (a) to be specified in the order; and any Local Government may, by writing, make the like order with reference to any foreigner within the jurisdiction of such Government.

[2] 3-A. (1) Whenever in a Presidency town the Commissioner of Police, or elsewhere the Magistrate of the District, considers that the Local Government should be moved to issue an order under section 3 in respect of any foreigner who is within the limits of such Presidency town or of the jurisdiction of such Magistrate, he may report the case to the Local Government and at the same time issue a warrant for the apprehension of such foreigner.

(2) Any officer issuing a warrant under sub-section (1) may, in his discretion, direct by endorsement on the warrant that if such foreigner executes a bond with or without sureties for his attendance at a specified place and time, the person to whom the warrant is directed shall take such security and release such foreigner from custody.

(3) Any person executing a warrant under sub-section (1) may search for and apprehend the foreigner named in such warrant; and, subject to any direction issued under sub-section (2), shall forthwith cause such foreigner when apprehended to be produced before the officer issuing the warrant.

(4) When a foreigner for whose apprehension a warrant has been issued under sub-section (1) is produced or appears before the officer issuing such warrant, such officer may direct him to be detained in custody pending the orders of the Local Government, or may release him on his executing a bond with or without sureties to appear at a specified place and time and thereafter if and when required until such orders are obtained.

(5) Any officer who has in accordance with the provisions of sub-section (4), ordered a foreigner to be detained or released on his executing a bond shall forthwith report the fact to the Local Government. On the receipt of a report under this sub-section the Local Government shall without delay either direct that the foreigner be discharged or make an order for the removal of such foreigner, in accordance with the provisions of section 3.

Leg. Changes:—[1] Paragraphs re definition of Number and Gender were repealed by Act X of 1914. [2] S. 3-A was added by Act III of 1915.

Case-law:—(a) i.e., within British India, 18 B. 636.

4. If any foreigner ordered to remove himself from British India, or ordered to remove himself therefrom by a particular route, shall neglect or refuse so to do, or if any foreigner, having removed himself from British India in consequence of an order issued under any of the provisions of this Act, or having been removed from British India under any of the said provisions, shall wilfully return thereto without a license in writing granted by the Governor General of India in Council or by the Local Government under whose order he shall have removed himself or been removed, such foreigner may be apprehended and detained in safe custody, until he shall be discharged therefrom by order of the Governor General of India in Council, or of the Local Government within whose jurisdiction he shall be so apprehended or detained, upon such terms and conditions as the said Governor General of India in Council or Local Government shall deem sufficient for the peace and security of British India, and of the allies of Her Majesty, and of the neighbouring Princes and States.

5. Whenever the Governor General of India in Council shall consider it necessary to take further precautions in respect of foreigners residing or travelling in British India or any part thereof, it shall be lawful for the Governor General of India in Council, by a notification published in the Gazette of India, to order that the provisions of this and the subsequent sections of this Act shall be in force in British India, or in such part thereof as shall be specified in such notification, for such period as shall be therein declared : and thereupon, and for such period, the whole of this Act including this and the subsequent sections shall have full force and effect in British India or such part thereof as shall have been so specified. The Governor General of India in Council may, from time to time, by a notification published as aforesaid, cancel or alter any former notification which may still be in force, or may extend the period declared therein : Provided that none of the provisions of this or the subsequent sections of this Act shall extend to any foreign minister duly accredited by his Government ; to any consul or vice-consul ; to any person under the age of fourteen years ; or to any person in the service of Her Majesty.

6. Every foreigner on arriving in any part of British India in which all the provisions of this Act are for the time being in force under an order issued as provided in the last preceding section, from any port or place not within British India, or from any port or place within British India where all the provisions of this Act are not in force, shall, if he arrive at a presidency-town, forthwith report himself to the Commissioner of Police of such town, or, if he arrive at any other place, then he shall forthwith report himself to the Magistrate of the district, or to such other officer as shall be appointed to receive such reports, by the Governor General of India in Council or by the Local Government of such place.

7. The report shall be in writing, and shall be signed by the person reporting himself, and shall specify his name or names, the nation to which he belongs, the place from which he shall have come, the place or places of his destination, the object of his pursuit, and the date of his arrival in such presidency-town or other place. The report shall be recorded by the officer to whom it is made.

What to be stated in the report.

8. The provisions of the last two preceding sections shall not extend to any person being the master or commander of a vessel or employed therein, but if any such person shall be in any part of British India in which all the provisions of this Act are for the time being in force, after he shall have ceased to be actually employed in a vessel, he shall forthwith report himself in manner aforesaid.

Foreigners, being masters of vessels or employed therein, to report themselves when they cease to be so employed.

Foreigners neglecting to report themselves, may be dealt with in like manner as foreigners travelling without a license.

9. If any foreigner shall neglect to report himself as required by this Act, he may be dealt with in the manner hereinafter provided in respect of foreigners travelling without a license.

No foreigner to travel in India without a license.

10. No foreigner shall travel in or pass through any part of British India in which all the provisions of this Act are for the time being in force without a license.

11. Licenses under this Act may be granted by the Governor General of India in Council or by any of the Local Governments, under the signature of a Secretary to the Government of India or to such Local Government, as the case may be, or by such other officers as shall be specially authorized to grant licenses by the Governor General of India in Council, or by any of the Local Governments.

License by whom to be granted.

12. Every such license shall state the name of the person to whom the license is granted, the nation to which he belongs, the district or districts through which he is authorized to pass or the limits within which he is authorized to travel, and the period (if any) during which the license is intended to have effect.

What to be stated in license.

13. The license may be granted subject to such conditions as the Governor General of India in Council or the Local Government may direct, or as the officer granting the license may deem necessary. Any license may be revoked at any time by the Governor General of India in Council, or by the Local Government of any part of British India in which all the provisions of this Act are for the time being in force and in which the foreigner holding the same may be, or by the officer who granted the license.

License may be granted subject to conditions, and may be revoked.

14. If any foreigner travel in or attempt to pass through any part of British India without such license as aforesaid, or beyond the districts or limits mentioned therein, or after such license shall have been revoked, or shall violate any of the conditions therein specified, he may be apprehended without warrant by any officer exercising any of the powers of a Magistrate, or by any European commissioned officer in the service of Her Majesty, or by any member of a volunteer corps enrolled by authority of Government whilst on duty, or by any police-officer.

15. If any person be apprehended by a person not exercising any of the powers of a Magistrate and not being a police-officer, he shall be delivered over as soon as possible to a police-officer, and forthwith carried before the Magistrate of the district. Whenever any person shall be apprehended by or taken before the Magistrate of the district, such Magistrate shall immediately report the case to the Local Government to which he is subordinate, and shall cause the person brought before him to be discharged, or to be conveyed to one of the presidency-towns, or pending the orders of such Government to be detained.

16. Any person apprehended or detained under the provisions of this Act may be admitted to bail by the Magistrate of the district, or by any officer authorized to grant licenses, and shall be put to as little inconvenience as possible during his detention in custody.

17. The Local Government of any part of British India in which all the provisions of this Act are for the time being in force may order any person apprehended or detained under the provisions of this Act to remove himself from any such part of British India, by sea or by such other route as the said Local Government may direct; or the said Local Government may cause him to be removed from such part of British India by such route and in such manner as to such Local Government shall seem fit. The Governor General of India in Council may exercise all the powers given by this section to any Local Government.

18. The Governor General of India in Council may by order prohibit any person or any class of persons not being natural-born subjects of Her Majesty within the meaning of the Statute 3 and 4 William IV, Chap. 85, section 81, from travelling in or passing through any part of British India in which all the provisions of this Act may, for the time being, be in force, and from passing from any part thereof to another without a license to be granted by such officer or officers as shall be specified in the order; and, if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 14 of this Act, and carried before the Magistrate of the district, and dealt with under the provisions of section 17 in the same manner as if he were a foreigner; and the Governor

General of India in Council may order such person to be detained in safe custody or under the surveillance of the police so long as it may be deemed necessary for the peace and security of British India or any part thereof.

19. The Local Government of any presidency or place in which all the provisions of this Act may, for the time being, be in force, may by order prohibit any person or any class of persons not being natural-born subjects of Her Majesty within the meaning of the Statute 3 and 4 William IV, Chap. 85, section 81, from travelling in or passing through such presidency or place or any part thereof, and from passing from any part thereof to another, without a license to be granted by such officer or officers as shall be specified in the order; and, if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 14 of this Act, and carried before the Magistrate of the district, and dealt with under the provisions of section 17 in the same manner as if he were a foreigner; and the Local Government may order such person to be detained in safe custody or under the surveillance of the police so long as it may be deemed necessary for the peace and security of British India or any part thereof.

20. It shall be lawful for the Commissioner of Police, or for the Magistrate of the district, or for any officer appointed to receive reports as mentioned in the sixth section of this Act, or for any police-officer under the authority of such Commissioner or Magistrate, to enter any vessel in any port or place within British India in which all the provisions of this Act may, for the time being, be in force, in order to ascertain whether any foreigner bound to report his arrival under the said section 6 of this Act is on board of such vessel; and it shall be lawful for such Commissioner of Police, Magistrate or other officer as aforesaid to adopt such means as may be reasonably necessary for that purpose; and the master or commander of such vessel shall also, before any of the passengers are allowed to disembark, if he shall be required so to do by such Commissioner of Police, Magistrate, or other officer as aforesaid, deliver to him a list in writing of the passengers on board, specifying the ports or places at which they embarked, and the ports or places of their disembarkation, or intended disembarkation, and answer to the best of his knowledge all such questions touching the passengers on board the said vessel, or touching those who may have disembarked in any part of British India, as shall be put to him by the Commissioner of Police, Magistrate, or other officer as aforesaid. If any foreigner on board such vessel in any part of British India shall refuse to give an account of his objects of pursuit in India, or if his account thereof shall not be satisfactory, the officer may refuse to allow him to disembark, or he may be dealt with in the same manner as a foreigner travelling in British India without a license.

S. 1 ACT III OF 1916 (FOREIGNERS' TRIAL BY CT. MAR.). Foreigners'

21. If the master or commander of a vessel shall wilfully give a false answer to any question which by section 20 of this Act he is bound to answer, or shall make any false report, he shall be held to have committed the offence specified in section 177 of the Indian Penal Code. XLV of 1860.

22. If the master or commander of any vessel shall wilfully neglect or refuse to comply with the requisitions of this Act, he shall, on conviction before the Magistrate of the district or a Justice of the Peace, be liable to a fine not exceeding two thousand rupees.

23. Whoever intentionally obstructs any officer in the exercise of any of the powers vested in him by this Act shall be held to have committed the offence specified in section 186 of the Indian Penal Code. XLV of 1860.

[1] 24. * * *

25. The Governor General of India in Council, or the Local Government of any part of British India in which this Act may, for the time being, be in force, may exempt any person, or any class of persons, either wholly or partially, or temporarily or otherwise, from all or any of the provisions of this Act contained in any of the sections subsequent to section 5, and may at any time revoke any such exemption.

THE FOREIGNERS' (TRIAL BY COURT-MARTIAL) ACT, 1916.

(ACT III OF 1916.)

[Passed on the 8th March, 1916.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1916	III	Foreigners' (Trial by Court-Martial) Ordinance.	Rep. by Act III of 1916.
1916	III	Foreigners' (Trial by Court-Martial) Act.	

An Act to provide for the trial, by court-martial, of foreigners for offences against the Defence of India Rules.

WHEREAS it is expedient to provide for the trial, by court-martial, of foreigners for offences against the Defence of India Rules; It is hereby enacted as follows:—

Short title, extent and duration. **1.** (1) This Act may be called the Foreigners' (Trial by Court-Martial) Act, 1916.

(2) It extends to the whole of British India, including British Baluchistan, the Sonthal Parganas, and the district of Angul.

Leg. Changes:—[1] This section regarding the method of recovering the fines imposed under this Act was repealed by Act X of 1914.

Foreigners' ACT III OF 1916 (FOREIGNERS' TRIAL BY CT. MAR.). S. 2

(3) It shall be in force during the continuance of the present war and for a period of six months thereafter :

Provided that the expiration of this Act shall not affect the validity of anything done in pursuance of it, and any person convicted under this Act may be punished as if it had continued in force, and all prosecutions and other legal proceedings pending under this Act at the time of the expiration thereof may be completed and carried into effect and the sentences carried into execution as if this Act had not expired.

Definitions.

2. In this Act—

(a) " British subject " has the same meaning as in section 27 of the British Nationality and Status of Aliens Act, 1914 :

4 & 5, Geo. V,
c. 17.

Provided that any person who holds a certificate of naturalization as a British subject granted under any Act of the Governor General in Council for the time being in force shall, for the purposes of this Act, be deemed to be a British subject.

(b) " Defence of India Rules " means any rules for the time being in force made under section 2 of the Defence of India (Criminal Law Amendment) Act, 1915.

IV of 1915.

(c) " Foreigner " means any person who is not a British subject.

Trial of foreigners
contravening rules
under section 2 of
the Defence of India
Act, 1915.

3. (1) The Governor General in Council may, by order in writing, direct that a foreigner accused of anything which is an offence in virtue of the Defence of India Rules shall be tried by court-martial.

(2) An order made under sub-section (1) may be made in respect of all foreigners or any particular foreigner or any class of foreigners, and in respect of all offences against the said rules or any particular offence or any class of offences.

(3) An order made under sub-section (1) may be made in respect of, or include, any foreigner so accused whether such offence was committed before or after the commencement of this Act.

4. When an order under section 3 has been made in respect of, or

Procedure on
making of order
under section 3.

includes, any foreigner, such foreigner, when so accused, may be taken into military custody, and shall, if he is already in other custody, be handed over to military custody, and shall be proceeded against and dealt with

as if he was a person subject to military law in accordance with the Army Act, and as if the offence of which he is accused was an offence against military law ; and may, on conviction, be sentenced to, and shall be liable to suffer, any punishment assigned by the Defence of India Rules for the offence of which he is found guilty.

44 and 45
Vict., c. 58.

5. The trial and all matters precedent thereto and attendant thereon

44 and 45
Vict., c. 58.

Procedure on trial.

shall be held and carried out in accordance with the provisions of the Army Act and the rules for the time

being in force thereunder :

Provided that the Governor General in Council may, by general or special order, modify, in such way as he may direct, any of the said provisions.

III of 1916. Repeal of Ordi-
nance III of 1916.

6. The Foreigners' (Trial by Court-Martial) Ordinance, 1916, is hereby repealed.

THE FOREIGN RECRUITING ACT, 1874.

(ACT IV OF 1874.)

[Passed on the 24th February, 1874.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1874	IV	Foreign Recruiting ...	Rep. in pt., Act XII of 1876.

An Act to control recruiting in British India for the service of Foreign States.

WHEREAS it is expedient that the Governor General in Council should exercise full control over recruiting in British India for the service of Foreign States; It is hereby enacted as follows:—

Short title. 1. This Act may be called the Foreign Recruiting Act, 1874.

Local extent. It extends to the whole of British India.

[Commencement.] Rep. by the Repealing Act, 1876 (XII of 1876).

"Foreign State" defined. 2. In this Act—

"Foreign State" includes any person or persons exercising or assuming to exercise the powers of Government in or over any country, colony, province or people beyond the limits of British India.

3. If any person is, within the limits of British India, obtaining or attempting to obtain recruits for the service of any Foreign State in any capacity, the Governor General in Council may, by order in writing signed by a Secretary to the Government of India, either prohibit such person from so doing, or permit him to do so subject to any conditions which the Governor General in Council thinks fit to impose.

4. The Governor General in Council may from time to time by general order notified in the Gazette of India, either prohibit recruiting for the service of any Foreign State, or impose upon such recruiting any conditions which he thinks fit.

5. The Governor General in Council may rescind or vary any order made under this Act in such manner as he thinks fit.

6. Whoever, in violation of the prohibition of the Governor General in Council, or of any condition subject to which permission to recruit may have been accorded,—

Offences.

(a) induces or attempts to induce any person to accept or agree to accept or to proceed to any place with a view to obtaining any commission or employment in the service of any Foreign State, or

(b) knowingly aids in the engagement of any person so induced, by forwarding or conveying him or by advancing money or in any other way whatever,

shall be liable to imprisonment for a term which may extend to seven years, or to fine to such amount as the Court thinks fit, or to both.

7. Any offence against this Act may be enquired into and tried, as well in any district in which the person accused may be found, as in any district in which it might be enquired into and tried under the provisions of the Code of Criminal Procedure.

THE INDIAN FOREST ACT, 1878.

(ACT VII OF 1878.)

[Passed on the 8th March, 1878.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1865	VII	Government Forests	... Rep., Act XII of 1891.
1869	VII	Forests (Burma)	... Rep., Act XIX of 1891.
1873	XIII	Burma Timber	... Do.
1878	VII	Forest	... Rep. in pt., Act VI of 1879. Am., Act V of 1890. Rep. in pt. and Am., Act V of 1901. Am., Act XV of 1911. Rep. in pt., Act X of 1914.

An Act to amend the law relating to forests, the transit of forest-produce and the duty leviable on timber.

WHEREAS it is expedient to amend the law relating to forests, the transit of forest-produce and the duty leviable on timber; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act^(a) may be called the Indian Forest Act, 1878.

It shall come into force at once in the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governors of the Lower Provinces, the North-Western Provinces, and the Punjab (except the district of Hazara), and the Chief Commissioners of Oudh, the Central Provinces and Assam.

Case-law:—(a) Nature of the Act, 55 P.L.R. 1901; curtails proprietary rights, *ibid*; does not oust Civil Court's power to decide whether land in dispute is forest land or waste land, 7 Bom. L.R. 490.

And any other Local Government may, from time to time, with the previous sanction of the Governor General in Council, extend, by notification in the local official Gazette, this Act to all or any of the territories for the time being under its administration.

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Interpretation-
clause.

2. In this Act, unless there be something repugnant in the subject or context,—

"Forest-officer" (a) means any person whom the Governor General in Council, or the Local Government or any officer empowered by the Governor General in Council or the Local Government in this behalf, may from time to time appoint by name, or as holding an office, to carry out all or any of the purposes of this Act, or to do anything required by this Act or any rule made under this Act to be done by a Forest-officer :

"tree" includes palms, bamboos, stumps, brushwood and canes :

"timber" includes trees when they have fallen or have been felled, and all wood, whether cut up or fashioned or hollowed out for any purpose or not :

"forest-produce" (b) includes—

(a) the following, whether found in, or brought from, a forest or not, that is to say :—

timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, [2] mahua seeds, and myrabolams, and

(b) the following when found in, or brought from, a forest, that is to say :—

- (i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned of trees,
- (ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,
- (iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and
- (iv) peat, surface-soil, rock and minerals (including limestone, laterite, mineral-oils, and all products of mines or quarries):

"forest-offence" means an offence punishable under this Act, or under any rule made under this Act :

"cattle" includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids :

"river" includes streams, canals, creeks and other channels, natural or artificial.

Leg. Changes:—[1] The paragraph regarding "repeal of enactments" was repealed by Act X of 1914. [2] The words "mahua seeds" were inserted by Act XV of 1911.

Case law :—(a) *e.g.*, Karkuns who issue passes, 2 Bom. L.R. 675 (679); is a public servant, 10 B. 124; forest-settlement-officer when Civil Court, 17 M. 193. (b) Includes stems of trees, 1 Weir 757; but not logs permanently fastened to buildings, 9 M. 373.

CHAPTER II.

OF RESERVED FORESTS.

3. The Local Government may, from time to time, constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

Notification by Local Government. **4.** Whenever it is proposed to constitute any land a reserved forest^(a), the Local Government may publish a notification^(b) in the local official Gazette—

- (a) declaring that it is proposed to constitute such land a reserved forest ;
- (b) specifying, as nearly as possible, the situation and limits of such land ; and
- (c) appointing an officer (hereinafter called "the Forest-settlement-officer ") to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest-produce, and to deal with the same as provided in this Chapter.

Explanation.—For the purpose of clause (b) of this section, it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries.

The officer appointed under clause (c) of this section shall ordinarily be a person not holding any forest-office except that of Forest-settlement-officer.

Nothing in this section shall prevent the Local Government from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest-office except as aforesaid, to perform the duties of a Forest-settlement-officer under this Act.

5. During the interval between the publication of such notification and the date fixed by the notification under section 19, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of Government or some person in whom such right was vested when the former notification was issued ; and no fresh clearings^(c) for cultivation or for any other purpose shall be made in such land^[1] except in accordance with rules prescribed by the Local Government.^[1]

Leg. Changes :—[1] Added by Act V of 1890.

Case-law :—(a) Meaning of 'reserved forest', 29 B. 480 ; scope of S 4 and powers of Government, *ibid.* (b) Effect of absence of notification, 1 Weir 759 ; jenmi's right to claim compensation, 7 M.L.J. 13. (c) Cutting trees in plot marked as waste number, no offence under this Act, Rat. Un. Cr. C. 873.

6. When a notification has been issued under section 4, the Forest-settlement-officer shall publish in the language of the country, in every town and village in the neighbourhood of the land comprised therein a proclamation—

- (a) specifying, as nearly as possible, the situation and limits of the proposed forest ;
- (b) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest ; and
- (c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right (a) mentioned in section 4 or 5 either to present to such officer within such period a written notice specifying, or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

7. The Forest-settlement-officer shall take down in writing all statements made under section 6, and shall, at some convenient place, inquire into all claims duly preferred under that section, and the existence of any rights mentioned in section 4 or 5 and not claimed under section 6 so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

8. For the purpose of such inquiry, the Forest-settlement-officer (b) may exercise the following powers, that is to say :—

- (a) power to enter, by himself or any officer authorized by him for the purpose, upon any land, and to survey, demarcate and make a map of the same ; and
- (b) the powers of a Civil Court in the trial of suits.

9. Rights in respect of which no claim has been preferred under section 6, and of the existence of which no knowledge has been acquired by inquiry under section 7, shall be extinguished, unless, before the notification under section 19 is published, the person claiming them satisfies the Forest-settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section 6.

[1] 9-A. (1) In the case of a claim relating to the practice of shifting cultivation, the Forest-settlement-officer shall record a statement setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regulated, and submit the statement to the Local Government, together with his opinion as to whether the practice should be permitted or prohibited wholly or in part.

Leg. Changes :—[1] Inserted by Act V of 1890.

Case-law :—(a) As to onus of proof—Long possession and enjoyment, 15 M. 315; 7 M.L.T. 241. (b) Scope of his powers, 14 M. 247.

(2) On receipt of the statement and opinion the Local Government may make an order permitting or prohibiting the practice wholly or in part.

(3) If such practice is permitted wholly or in part, the Forest-settlement-officer may arrange for its exercise—

- (a) by altering the limits of the land under settlement so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants, or
- (b) by causing certain portions of the land under settlement to be separately demarcated, and giving permission to the claimants to practise shifting cultivation therein under such conditions as he may prescribe.

All arrangements made under this sub-section shall be subject to the previous sanction of the Local Government.

(4) The practice of shifting cultivation shall in all cases be deemed a privilege subject to control, restriction and abolition by the Local Government.

10. In the case of a claim to a right in or over any land, other than a right of way or pasture, or to forest-produce or a water-course^(a), the Forest-settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

Power to acquire land over which right is claimed.

If such claim is admitted in whole or in part, the Forest-settlement-officer shall either (1) exclude such land from the limits of the proposed forest; or (2) come to an agreement with the owner thereof for the surrender of his rights; or (3) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1894.

I of 1894.

For the purpose of so acquiring such land—

- (a) the Forest-settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1894.
- (b) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section 9 of that Act;
- (c) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and
- (d) the Collector, with the consent of the claimant, or the Court, with the consent of both parties^(b), may award compensation in land, or partly in land and partly in money.

I of 1894.

Order on claims to rights of pasture or to forest-produce.

11. In the case of a claim^(c) to rights of pasture or to forest-produce, the Forest-settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

Case-law :—(a) Claim of riparian owner to uninterrupted flow of water of natural stream, 20 M. 279. (b) e.g., claim between mortgagor and mortgagees, 21 B. 396. (c) Onus on claimant to prove title in the first instance, 3 M.L.J. 231.

Record to be made by Forest-settlement-officer. **12.** The Forest-settlement-officer, when passing any order under section 11, shall record, so far as may be practicable,—

- (a) the name, father's name, caste, residence and occupation of the person claiming the right ;
- (b) the designation, position and area of all fields or groups of fields (if any), and the designation and position of all buildings (if any) in respect of which the exercise of such rights is claimed.

13. If the Forest-settlement-officer admits in whole or in part any claim under section 11, he shall also record the extent to which the claim is so admitted, specifying the number and description of the cattle which the claimant is from time to time entitled to graze in the forest, the season during which such pasture is permitted, the quantity of timber and other forest-produce which he is from time to time authorized to take or receive, or such other particulars as the case may require. He shall also record whether the timber or other forest-produce obtained by the exercise of the rights claimed may be sold or bartered.

14. After making such record, the Forest-settlement-officer shall, to the best of his ability, and having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights so admitted. For this purpose the Forest-settlement-officer may—

- (a) set out some other forest-tract of sufficient extent, and in a locality reasonably convenient, for the purposes of such claimants, and record an order conferring upon them a right of pasture or to forest-produce (as the case may be) to the extent so admitted ; or
- (b) so alter the limits of the proposed forest as to exclude forest-land of sufficient extent, and in a locality reasonably convenient, for the purposes of the claimants ; or
- (c) record an order, continuing to such claimants a right of pasture or to forest-produce (as the case may be) to the extent so admitted, at such seasons, within such portions of the proposed forest and under such rules, as may from time to time be prescribed by the Local Government.

15. In case the Forest-settlement-officer finds it impossible, having due regard to the maintenance of the reserved forest, to make such settlement under section 14 as shall ensure the continued exercise of the said rights to the extent so admitted, he shall (subject to such rules as the Local Government may from time to time prescribe in this behalf) commute such rights, either by the payment to such persons of a sum of money in lieu thereof, or by the grant of land, or in such other manner as he thinks fit.

16. Any person who has made a claim under this Act, or any Forest-officer or other person generally or specially empowered by the Local Government in this behalf, may, within three months from the date of the order passed on such claim by the Forest-settlement-officer under section 10, 11, 14 or 15, present an appeal ^(a) from such order to such officer of the Revenue Department, of rank not lower than that of a Collector or Deputy Commissioner, as the Local Government may from time to time, by notification in the local official Gazette, appoint by name, or as holding an office, to hear appeals from such orders :

Provided that, if the Local Government establishes (as it is hereby empowered to do) a Court (hereinafter called the Forest Court) composed of three persons to be appointed by the Local Government, such appeals shall be presented to such Court.

17. Every appeal under section 16 shall be made by petition in writing, and may be delivered to the Forest-settlement-officer, who shall forward it without delay to the authority competent to hear the same.

If the appeal be to an officer appointed under section 16, it shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue.

If the appeal be to the Forest Court, the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the appeal, and shall give notice thereof to the parties, and shall hear such appeal accordingly.

The order passed thereon by such officer or Court, or by the majority of the members of such Court, shall be final, subject to revision by the Local Government.

18. The Local Government, or any person who has made a claim under this Act, may appoint any person to appear, plead and act, on its or his behalf before the Forest-settlement-officer, or the appellate officer or Court, in the course of an inquiry or appeal under this Act.

19. (b) When the following events have occurred (namely) :—

(a) the period fixed under section 6 for preferring claims has elapsed, and all claims (if any) made within such period have been disposed of by the Forest-settlement-officer ; and

(b) if such claims have been made, and the period limited by section 16 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed ^(c) of by the appellate officer or Court ; and

Case-law :—(a) Lies where forest-settlement-officer has acted without jurisdiction, 17 M. 193 ; as to power to excuse delay in filing appeal under S. 5, Limitation Act, see 10 M. 210. (b) Scope of section, 12 M. 226. (c) One essential condition under the section is disposal of all claims, 12 M. 226 ; as to a case when removal of grass from land in Government's possession but not declared reserved forest was held to be offence, see 1 Weir 492.

- (c) all lands (if any) to be included in the proposed forest, which the Forest-settlement-officer has, under section 10, elected to acquire under the Land Acquisition Act, 1894, have become I of 1894. vested in the Government under section 16 of that Act,

the Local Government may publish a notification in the local official Gazette, specifying definitely, according to boundary-marks erected or otherwise, the limits of the forest which it is intended to reserve, and declaring the same to be reserved from a date fixed by such notification.

From the date so fixed such forest shall be deemed to be a reserved forest.

Publication of translation of such notification in neighbourhood of forest.

20. The Forest-officer shall, before the date fixed by such notification, cause a translation thereof into the language of the country to be published in every town and village in the neighbourhood of the forest.

21. The Local Government may, within five years from the publication of any notification under section 19, revise any arrangement made under section 14 or 17, and may, for this purpose, rescind or modify any order made under section 14 or 17, and direct that any one of the proceedings specified in section 14 be taken in lieu of any other of such proceedings, or that the rights admitted under section 11 be commuted under section 15.

Power to revise arrangement made under section 14 or 17.

22. No right of any description shall be acquired in or over a reserved forest, except by succession or under a grant or contract in writing made by or on behalf of the Government or of some person in whom such right was vested when the notification under section 19 was issued.

No right acquired over reserved forest, except as here provided.

23. Notwithstanding anything contained in section 22, no right continued under section 14, clause (c), shall be alienated by way of grant, sale, lease, mortgage or otherwise, without the sanction of the Local Government:

Rights not to be alienated without sanction.

Provided that, when any such right is appendant to any land or house, it may be sold or otherwise alienated with such land or house.

No timber or other forest-produce obtained in exercise of any such right shall be sold or bartered except to such extent as may have been admitted in the order recorded under section 13.

24. The Forest-officer may, from time to time, with the previous sanction of the Local Government or of any officer duly authorized in that behalf, stop any public or private way or water-course in a reserved forest:

Power to stop ways and water-courses in reserved forests.

Provided that a substitute for the way or water-course so stopped, which the Local Government deems to be reasonably convenient, already exists, or has been provided or constructed by the Forest-officer in lieu thereof.

Acts prohibited in
such forests.

25.(a) Any person who—

- (a) makes any fresh clearing (b) prohibited by section 5, or
[1] (b) sets fire to (c) a reserved forest, or, in contravention of any rules made by the Local Government, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest ;

or who, in a reserved forest,—

- (c) kindles, keeps or carries any fire (d) except at such seasons as the Forest-officer may from time to time notify in this behalf .
(d) trespasses or pastures cattle, or permits cattle to trespass (e) ,
(e) causes any damage by negligence in felling any tree or cutting or dragging any timber ;
(f) fells (f), girdles, lops, taps or burns any tree, or strips off the bark (g) or leaves from, or otherwise damages, the same ;
(g) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process or removes, any forest-produce
(h) clears (h) or breaks up any land for cultivation or any other purpose ; or,
(i) in contravention of any rules which the Local Government may from time to time prescribe, kills or catches elephants, hunts (i), shoots (j), fishes, poisons water or sets traps or snares,

shall be punished (k) with imprisonment for a term which may extend to six months, or with fine not exceeding five hundred rupees, or with both, in addition to such compensation (l) for damage done to the forest as the convicting Court may direct to be paid.

Nothing in this section shall be deemed to prohibit (a) any act done by permission in writing (m) of the Forest-officer, or under any rule made by the Local Government; or (b) the exercise of any right continued under section 14, clause (c), or created by grant or contract in writing made by or on behalf of Government under section 22.

Leg. Changes :—[1] Substituted by Act V of 1890.

Case-law :—(a) Section penal and to be construed strictly, 26 M. 470 ; to be read with S 56, 2 Bom. L.R. 675 ; case under this section is summons case, 19 P.R. 1900, Cr. (b) Means removal of trees or shrubs, 26 M. 470 (c) Meaning of 'sets fire to,' 30 P.R. 1916, Cr.=51 P.W.R. 1916=17 Cr. L.J. 458=36 Ind. Cas. 138. (d) Mere possession of flint or steel within forest limits, no offence, 4 Bom. L.R. 935. (e) What constitutes trespass, 1 Weir 762 ; evidence requisite, 15 M. 156 ; mere straying of cattle, no offence, 1 Weir 764 ; test is whether owner did or did not take proper precautions to prevent trespass, 16 P.R. 1909, Cr.; see, also, 11 N.L.R. 76=29 Ind. Cas. 325. (f) e.g., stems of trees, 1 Weir 757. (g) cutting bark from forest not defined or notified, no offence, 1 Weir 411. (h) e.g., clearing during pendency of appeal, 12 M. 338. (i) 'Hunt' used intransitively, 12 Bom. L.R. 520=7 Ind. Cas. 450 ; includes preparing to kill game, 1 Weir 764 ; common object to hunt punishable, 15 A.L.J. 824. (j) Shooting tiger in a reserved forest without a license is an offence, 20 Bom. L.R. 384=4 Bom. Cr. Cas. 240 ; but *contra* shooting no offence in the absence of rule prohibiting the same, Rat. Un. Cr. C. 684. (k) Levy of pound fine no bar to prosecution, 1 Weir 763 ; confiscation to be simultaneous with punishment, 27 C. 450. (l) but not amount spent for Court-fee, Rat. Un. Cr. C. 695. (m) See 2 Bom. L.R. 675.

Whenever fire is caused wilfully or by gross negligence in a reserved forest, the Local Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest-produce shall be suspended for such period as it thinks fit.

26. The Local Government may, [1] subject to the control [1] of the Governor General in Council, by notification in the local official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be a reserved forest.

Power to declare forest no longer reserved.

From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

CHAPTER III.

OF VILLAGE-FORESTS.

27. The Local Government may from time to time assign to any village-community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village-forests.

Formation of village-forests.

The Local Government may from time to time make rules for regulating the management of village-forests, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest-produce or pasture, and their duties for the protection and improvement of such forest.

All provisions of this Act relating to reserved forests shall (so far as they are consistent with the rules so made) apply (a) to village-forests.

CHAPTER IV.

OF PROTECTED FORESTS.

28. The Local Government may from time to time, by notification in the local official Gazette, declare the provisions of this Chapter applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled.

The forest-land and waste-lands comprised in any such notification shall be called a "protected forest."

No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the Local Government thinks sufficient.

Leg. Changes :—[1] Substituted by Act XV of 1911.

Case law :—(a) but not to land included in a survey number in an occupant's holding, 7 Bom. L.R. 762.

Every such record shall be presumed to be correct until the contrary is proved :

Provided that, if in the case of any forest-land or waste-land, the Local Government thinks that such inquiry and record are necessary, but that they will occupy such length of time as that the rights of Government will, in the meantime, be endangered, the Local Government may (pending such inquiry and record) declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

- Power to issue notification—** **29.** The Local Government may from time to time, by notification in the local official Gazette,—
- (a) declare any class of trees in a protected forest, or any trees in any such forest, to be reserved from a date fixed by such notification ;
 - (b) declare that a portion of such forest be closed for such term, not exceeding twenty years, as the Local Government thinks fit, and that the rights of private persons (if any) over such portion shall be suspended during such term : Provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed ;
 - (c) prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal, of any forest-produce, in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, any land in any such forest ; and
 - (d) alter or cancel such declaration or prohibition.

30. The Collector or Deputy Commissioner of the district shall cause a translation into the language of the district, of every notification issued under section 29, to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification.

Publication of translation of such notification in neighbourhood.

Power to make rules for protected forests. **31.** The Local Government may from time to time [1] and subject to the control of the Governor General in Council [1] make rules to regulate the following matters :—

- (a) the cutting, sawing, conversion and removal of trees and timber, and the collection (b), manufacture and removal of forest-produce (c), from protected forests ;

Leg. Changes :—[1] Inserted by Act XV of 1911.

Case-law :—(a) Closing of forest for indefinite term not bad, 19 P.R. 1880, Cr. (b) Purchase of wild mace from Pariah female is not 'collection' of forest produce, 1 Weir 769. (c) Does not include article manufactured out of timber, 1 Weir 766 ; nor bat's dung, 1 Weir 769 ; proof of land being Government forest necessary for conviction, 1 Weir 768 ; *ibid.* 771, 773.

- (b) the granting of licenses to the inhabitants of towns and villages in the vicinity of protected forests to take trees, timber or other forest-produce for their own use, and the production and return of such licenses by such persons ;
- (c) the granting of licenses to persons felling or removing trees or timber or other forest-produce from such forests for the purposes of trade, and the production and return of such licenses by such persons ;
- (d) the payments (if any) to be made by the persons mentioned in clauses (b) and (c) of this section, for permission to cut such trees, or to collect and remove such timber or other forest-produce ;
- (e) the other payments, if any, to be made by them in respect of such trees, timber and produce, and the places where such payment shall be made ;
- (f) the examination of forest-produce passing out of such forests ;
- (g) the clearing and breaking up of land for cultivation or other purposes in such forests ;
- (h) the protection from fire of timber lying in such forests and of trees reserved under section 29 ;
- (i) the cutting of grass and pasturing of cattle in such forests ;
- (j) killing or catching elephants, hunting, shooting, fishing, poisoning water and setting traps or snares in such forests ;
- (k) the protection and management of any portion of a forest closed under section 29 ;
- (l) the exercise of rights referred to in section 28.

Penalties for acts
in contravention of
notification under
section 29.

32. Any person who commits any of the following offences :—

- (a) fells, girdles, lops, taps or burns any tree reserved under section 29, or strips off the bark or leaves from, or otherwise damages (a), any such tree ;
- (b) contrary to any prohibition under section 29, quarries any stone, or burns any lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce ;
- (c) contrary to any prohibition under section 29, breaks up or clears for cultivation or any other purpose any land in any protected forest ;
- (d) sets fire to such forest, or kindles (b) a fire without taking all reasonable precautions to prevent its spreading to any trees reserved under section 29, whether standing, fallen or felled, or to any closed portion of such forest ,
- (e) leaves burning any fire kindled by him in the vicinity of any such trees or closed portion ;
- (f) fells any tree or drags any timber so as to damage any tree reserved as aforesaid ;

Case-law :—(a) No provision for award of compensation for damages in respect of protected forest, 8 Bom. L. R. 987. (b) *I.e.*, within protected area, 1 Weir 769.

- (g) permits cattle to damage any such tree ;
- (h) infringes any rule made under section 31 ;

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

[1] Whenever fire is caused wilfully or by gross negligence in a protected forest, the Local Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of any right of pasture or to forest-produce shall be suspended for such period as it thinks fit.[1]

33. Nothing in this Chapter shall be deemed to prohibit any act done with the permission in writing of the Forest-officer, or in accordance with rules made under section 31, or (except as regards any portion of a forest closed under section 29) [2] or any rights the exercise of which has been suspended under section 32 [2] in the exercise of any right recorded under section 28.

Nothing in this Chapter to prohibit acts done in certain cases.

CHAPTER V.

FORESTS UNDER CONSERVANCY-ADMINISTRATION WHEN THIS ACT COMES INTO FORCE.

34. Within twelve months from the date on which this Act comes into force in the territories administered by any Local Government, such Government shall, after consideration of the rights of the Government and private persons in all forest-lands or waste-lands then under its executive control for purposes of forest-conservancy, determine which of such lands (if any) can according to justice, equity and good conscience, be classed as reserved forests or protected forests under this Act, and declare, by notification (a) in the local official Gazette, any lands so classed to be reserved or protected forests, as the case may be:

Provided (b) that such declaration shall not affect any rights of the Government or private persons to or over any land or forest-produce in any such forest, which have, previous to the date of such declaration, been inquired into, settled and recorded in a manner which the Local Government thinks sufficient :

Provided also that if any such rights have not on such date been so inquired into, settled and recorded, the Local Government shall direct that the same shall be inquired into, settled and recorded in the manner provided by this Act for reserved or protected forests, as the case may be . and, until such inquiry, settlement and record have been completed, no such declaration shall abridge or affect such rights.

Leg. Changes:—[1] Added by Act V of 1901. [2] Inserted by Act V of 1901.

Case-law :—(a) See 7 Bom. L.R. 762. (b) Scope of proviso, enquiry discretionary with Government, 34 M. 353.

CHAPTER VI.

OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE
PROPERTY OF GOVERNMENT.

Protection of
forests for special
purposes.

35. The Local Government may from time to time, by notification in the local official Gazette, regulate or prohibit in any forest or waste-land—

- (a) the breaking up or clearing of land for cultivation ;
- (b) the pasturing of cattle ;
- (c) the firing or clearing of the vegetation ;

when such regulation or prohibition appears necessary for any of the following purposes :—

first, for protection against storms, winds, rolling stones, floods and avalanches ;

second, for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of landslips and of the formation of ravines and torrents, and the protection of land against erosion, or the deposit thereon of sand, stones or gravel ;

third, for the maintenance of a water-supply in springs, rivers and tanks ;

fourth, for the protection of roads, bridges, railways and other lines of communication ;

fifth, for the preservation of the public health ;

and may alter or cancel such notification.

The Local Government may, for any such purpose, construct at its own expense, in or upon any forest or waste-land, such work as it thinks fit :

Provided that no such notification shall be made or work begun until after the issue of a notice to the owner of such forest or land, calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, and until his objections (if any) and any evidence he may produce in support of the same have been heard by an officer duly appointed in that behalf and have been considered by the Local Government.

36. In case of neglect of, or wilful disobedience to, any regulation or prohibition under section 35, or if the purposes of any work to be constructed under that section so require, the Local Government may, after notice in writing to the owner of such forest or land and after considering his objections (if any), place the same under the control of a Forest-officer, and may declare that all or any of the provisions of this Act relating to reserved forests shall apply to such forest or land.

The net profits (if any) arising from the management of such forest or land shall be paid to the said proprietor.

37. In any case under this Chapter in which the Local Government considers that, in lieu of placing the forest or land under the control of a Forest-officer, the same should be acquired for public purposes, the Local Government may proceed to acquire it in the manner prescribed by the Land Acquisition Act, 1894.

I of 1894.

Expropriation of forests in certain cases.

The owner of any forest or land comprised in any notification under section 35 may, at any time not less than three or more than twelve years from the date thereof, require that such forest or land shall be acquired for public purposes, and the Local Government shall acquire such forest or land accordingly.

38. The owner of any land or, if there be more than one owner thereof, the owners of shares therein amounting in the aggregate to at least two-thirds thereof, may, with a view to the formation or conservation of forests thereon, represent in writing to the Collector or Deputy Commissioner their desire—

Protection of forests at request of owners.

(a) that such land be managed on their behalf by the Forest-officer as a reserved or a protected forest on such terms as may be mutually agreed upon ; or

(b) that all or any of the provisions of this Act be applied to such land.

In either case, the Local Government may, by notification in the local official Gazette, apply to such land such provisions of this Act as it thinks suitable to the circumstances thereof and as may be desired by the applicants.

Any such notification may be altered or cancelled by a like notification.

CHAPTER VII.

OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE.[1]

39. The Local Government, [2] subject to the control [2] of the Governor General in Council, may levy a duty in such manner, at such places and at such rates as it may from time to time prescribe by notification in the local official Gazette on all timber [3] or other forest-produce [3]—

Power to impose duty on timber and other forest produce.

(a) which is produced in British India, and in respect of which the Government has any right ;

(b) which is brought from any place beyond the frontier of British India :

[4] Provided that a notification directing the levy of a duty, in the case of timber and other forest-produce brought from any place beyond the frontier of British India, which is not under the control of the Local Government, shall not be issued without the previous sanction of the Governor General in Council.

Leg. Changes :—[1] Substituted by Act V of 1890. [2] Substituted by Act XV of 1911. [3] Inserted by Act V of 1890. [4] Inserted by Act XV of 1911.

In every case in which such duty is directed to be levied *ad valorem*, the Local Government may,^[1] subject to the like control or sanction, respectively^[1] from time to time fix, by like notification, the value on which such duty shall be assessed.

Power to fix value
for *ad valorem* duty.

All duties on timber^[2] or other forest-produce^[2], which, at the time when this Act comes into force in any territory, are levied therein under the authority of the Local Government, shall be deemed to be and to have been duly levied under the provisions of this Act.

40. Nothing in this Chapter shall be deemed to limit the amount (if any) chargeable as purchase-money or royalty on any timber or other forest-produce, although the same is levied on such timber or produce while in transit, in the same manner as duty is levied.

Limit not to apply
to purchase-money
or royalty.

CHAPTER VIII.

OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT.

41(a). The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, is vested in the Local Government, and it may from time to time make rules to regulate the transit of all timber and other forest-produce.

Power to make
rules to regulate
transit of forest
produce,

Such rules may (among other matters)—

- (a) prescribe the routes by which alone timber^[3] or other^[3] forest-produce may be imported, exported or moved^(b) into, from or within, British India ;
- (c) (b) prohibit the import and export or moving of such timber or other produce without a pass from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such pass ;
- (c) provide for the issue, production and return^(d) of such passes and for the payment of fees therefor ;
- (d) provide for the stoppage, reporting, examination and marking of timber or other forest-produce in transit, in respect of which there is reason to believe that any money is payable to Government on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or to which it is desirable for the purposes of this Act to affix a mark ;
- (e) provide for the establishment and regulation of depôts to which such timber or other produce shall be taken by those in

Leg. Changes :—[1] Substituted by Act XV of 1911. [2] Inserted by Act V of 1890. [3] Substituted by Act V of 1890.

Case-law :—(a) Scope of section to give power to make rules regulating transit of all timber and certain classes of timber within local limits, 4 Ind. Cas. 405. (b) Meaning, 4 Ind. Cas. 405. (c) Prohibiting removal of firewood from private land without owner's certificate, illegal, 108 L.R. 9 = 17 C.L.J. 364 = 35 Ind. Cas. 668. (d) Omission to return pass not an offence, Rat. Un. Cr. C. 500 ; see Rat. Un. Cr. C. 659.

charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it; and the conditions under which such timber or other produce shall be brought to, stored at and removed from such [1] depôts;

- (f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches and leaves into any such river or any act which may cause such river to be closed or obstructed;
- (g) provide for the prevention and removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;
- (h) prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw-pits, the converting, cutting, burning, concealing or marking of timber, the altering or effacing of any marks on the same, and the possession or carrying of marking hammers or other implements used for marking timber;
- (i) regulate the use of property-marks for timber, and the registration of such marks; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

[2] The Local Government may direct that any rule made under this section shall not apply to any specified class of timber or other forest-produce or to any specified local area.

42. The Local Government may, by such rules, prescribe as penalties for the infringement thereof imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

Penalty for breach of rules made under section 41.

Double penalties may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or if the offender has been previously convicted of a like offence.

43. The Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest-produce while at a depot established under a rule made under section 41, or while detained elsewhere. for the purposes of this Act; and no Forest-officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously or fraudulently.

Government and Forest officers not liable for damage to forest-produce at depot.

Leg. Changes :—[1] Substituted by Act XII of 1891. [2] Added by Act V of 1890.

44. In case of any accident or emergency involving danger to any property at any such depot, every person employed at such depot, whether by the Government or by any private person, shall render assistance to any Forest-officer or Police-officer demanding his aid in averting such danger and securing such property from damage or loss.

All persons bound to aid in case of accident at depot.

CHAPTER IX^(a).

OF THE COLLECTION OF DRIFT AND STRANDED TIMBER.

Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly.

45(b). All timber found adrift, beached, stranded^(b) or sunk :

all wood or timber bearing marks which have not been registered under section 41, or on which the marks have been obliterated, altered or defaced by fire or otherwise, and,

in such areas as the Local Government directs, all unmarked wood and timber,

shall be deemed to be the property of Government unless and until any person establishes his right and title thereto, as provided in this Chapter.

Such timber may be collected by any Forest-officer or other person entitled to collect the same by virtue of any rule made under section 51, and may be brought to such depots as the Forest-officer may from time to time notify as depots for the reception of drift timber.

The Local Government may, by notification in the local official Gazette, exempt any class of timber from the provisions of this section, and withdraw such exemption.

46. Public notice shall from time to time be given by the Forest-officer of timber collected under section 45. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than two months from the date of such notice, a written statement of such claim.

Notice to claimants of drift-timber.

47. When any such statement is presented as aforesaid, the Forest-officer may, after making such inquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

Procedure on claim preferred to such timber.

If such timber is claimed by more than one person, the Forest-officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the Civil Courts, and retain the timber pending the receipt of an order from any such Court for its disposal.

Case-law :—(a) Scope of chapter, 24 O. 504. (b) Scope of section, 24 O. 504 (P.C.); L.B.R. (1893—1900), 58; object of Act is regulation and not confiscation, *ibid*. (c) *I.e.*, those that have gone below catching places, 13 P.R. 1883, Cr.

Any person whose claim has been rejected under this section may,

On rejection of claim to such timber, claimant may institute suit.

[1] within three months[1] from the date of such rejection, institute a suit to recover possession of the timber claimed by him; but no person shall recover any compensation or costs against the Government, or against any Forest-officer, on account of such rejection, or the detention or removal of any timber or the delivery thereof to any other person under this section.

No such timber shall be subject to process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been brought, as provided in this section.

48. If no such statement is presented as aforesaid, or if the claim-

Disposal of un-claimed timber.

ant omits to prefer his claim in the manner and within the period prescribed by the notice issued under section 46, or, on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period limited by section 47, the ownership of such timber shall vest in the Government, or, when such timber has been delivered to another person under section 47, in such other person free from all encumbrances [2] not created by him[2].

49. The Government shall not be responsible for any loss or

Government and its officers not liable for damage to such timber.

damage which may occur in respect of any timber collected under section 45, and no Forest-officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously or fraudulently.

50. No person shall be entitled to recover possession of any

Payments to be made by claimant before timber is delivered to him.

timber collected or delivered as aforesaid until he has paid to the Forest-officer or other person entitled to receive it such sum on account thereof as may be due under any rule made in pursuance of section 51.

Power to make rules and prescribe penalties.

51. The Local Government may, from time to time, make rules to regulate the following matters (namely):—

- (a) the salving, collection and disposal of all timber (a) mentioned in section 45;
- (b) the use and registration of boats used in salving and collecting timber;
- (c) the amounts to be paid for salving, collecting, moving, storing and disposing of such timber;
- (d) the use and registration of hammers and other instruments to be used for marking such timber.

Leg. Changes:—[1] Substituted by Act V of 1890. [2] Added by Act V of 1890.

Case-law:—(a) I.e., timber that has gone below catching places, i.e., drift or stranded timber, 13 P.R. 1893, Cr.; timber found in open field not timber in exclusive possession of accused, 128 P.L.R. 1902.

The Local Government may from time to time prescribe, as penalties for the infringement of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

CHAPTER X.

PENALTIES AND PROCEDURE.

52. When there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts and cattle used in committing any such offence, may be seized by any Forest-officer (a) or Police-officer.

Seizure of property
liable to confiscation.

Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made :

Application for
confiscation.

Provided that, when the forest-produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

53. Upon the receipt of any such report the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

Procedure there-
upon.

54. All timber (b) or forest-produce which is not the property of Government and in respect of which a forest-offence has been committed, and all tools, boats, carts and cattle used in committing any forest-offence, shall be liable to confiscation.

Forest-produce,
tools, etc., when
liable to confiscation.

Such confiscation (c) may be in addition to any other punishment prescribed for such offence.

55 (d). When the trial of any forest-offence is concluded, any forest-produce in respect of which such offence has been committed shall, if it is the property of Government or has been confiscated, be taken charge of by a Forest-officer and in any other case (f) may be disposed of in such manner as the Court may direct.

Disposal (e), on
conclusion of trial
for forest-offence, of
produce in respect
of which it was
committed.

Case law :—(a) Seizure of timber by an officer for want of pass justifiable but not detention of seized goods without following procedure under section and making report to Magistrate, 15 B. 229. (b) Logs fastened to building are not timber and could not be confiscated, 9 M. 373. (c) Can be made only at the time of punishment, 4 A. 417; 27 C. 450; 1 Weir 775; if property does not belong to Government, *ibid*; no reward can be paid out of property if it belongs to Government, Rat Un. Cr. C. 620; order under this section appealable, 1 Weir 776; L.B.R. (1893—1900) 423; appellate court cannot direct confiscation, *ibid*. (d) Section more restricted than S. 517, Cr. P.C., L.B.R. (1893—1900) 20; and does not provide for cases in which no offence is proved to have been committed, L.B.R. (1893—1900) 21. (e) If property belongs to Government, it should be given to Government, 5 Bom. L.R. 124; and, no reward should be given out of it, Rat Un. Cr. C. 361. (f) See 1 Weir 775 (order handing over property to Government where accused is acquitted, legal).

56. When the offender is not known, or cannot be found, the Magistrate may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated (a) and taken charge of by the Forest-officer, or to be made over to the person [1] whom the Magistrate deems to be entitled to the same[1] :

Procedure when offender not known or cannot be found.

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

57. The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

Procedure as to perishable property seized under section 52.

58(b). The officer who made the seizure under section 52, or any of his official superiors, or any person claiming to be interested in the property so seized, may, within one month from the date of any order passed under section 54, 55 or 56, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

Appeal (c) from orders under sections 54, 55 and 56.

59. When an order for the confiscation of any property has been passed under section 54 or 56, as the case may be, and the period limited by section 58 for an appeal from such order has elapsed and no such appeal has been preferred, or when, on such an appeal being preferred, the appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all incumbrances.

Property when to vest in Government.

60. Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the Local Government from directing at any time the immediate release of any property seized under section 52.

Saving of power to release property seized.

61. Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Punishment for wrongful seizure.

Leg. Changes :—[1] Substituted by Act V of 1890.

Case-law :—(a) Forfeiture cannot be directed where good title has vested in third parties, 2 Bom. L R. 675. (b) High Court's powers of revision not excluded by section, 4 A. 417. (c) Lies from order under S. 54, 1 Weir 776 ; appellate Court bound to do so and could not refer to Civil Court, *ibid*.

Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary marks.

62. Whoever (a), with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code, XLV of 1861

- (a) knowingly counterfeits upon any timber or standing tree a mark used by Forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person ; or
- (b) alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest-officer ; or
- (c) alters, moves, destroys or defaces any boundary mark (b) of any forest or waste-land to which the provisions of this Act are applied,

shall be punished with imprisonment for a term which may extend to two years; or with fine, or with both.

63. Any Forest-officer or Police-officer may, without orders from

Power to arrest without warrant.

a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards.

Every officer making an arrest under this section shall without unnecessary delay take or send the person arrested before the Magistrate having jurisdiction in the case, [1] or to the officer in charge of the nearest police-station [1].

Nothing in this section shall be deemed to authorise such arrest for any act which is an offence under Chapter IV of this Act, unless such act has been prohibited under section 29, clause (c).

Power to prevent commission of offence.

64. Every Forest-officer and Police-officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence (e).

65. The District Magistrate and any Magistrate of the first class

Power to try offences summarily.

specially empowered in this behalf by the Local Government may try summarily under the Code of Criminal Procedure, any forest-offence punishable only with imprisonment for a term not exceeding six months or fine not exceeding five hundred rupees, or both.

66. Nothing in this Act shall be deemed to prevent any person from

Operation of other laws not barred.

being prosecuted under any other law (d) for any act or omission which constitutes an offence against this Act or the rules made under it, or from being liable

Leg. Changes :—[1] Added by Act V of 1890.

Case-law :—(a) Does not include person doing any act in good faith in the exercise of a valid right, 14 M. 247. (b) *I.e.*, of lands to which the Act applies, *ibid.* (c) Disposal of more produce than what belonged to the accused by issuing pass for Government produce and removing them, Rat. Un. Cr. C. 659. (d) *E.g.*, Penal Code, S. 379, 10 P.R. 1885, Cr.; see 4 P.R. 1869, Cr.

under such other law to any higher punishment or penalty than that provided by the rules made under this Act :

Provided that no person shall be punished twice for the same offence.

[1] 67. (1) The Local Government may, from time to time, by notification in the official Gazette, empower
 Power to com- a Forest-officer (a), by name, or as holding an
 pound offences. office,—

(a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in section 61 or section 62, a sum of money by way of compensation for the offence which such person is suspected to have committed, and

(b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer (b).

(2) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(3) A Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of a Ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under subsection (1), clause (a), shall in no case exceed the sum of fifty rupees.

68. When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved.
 Presumption (c) that forest-produce belongs to Government.

CHAPTER XI.

CATTLE-TRESPASS.

69. Cattle^(d) trespassing in a reserved forest or in any portion of a protected forest which has been lawfully closed to grazing shall be deemed to be cattle doing damage to a public plantation within the meaning of the 11th section of the Cattle-trespass Act, 1871, and may be seized and impounded as such by any Forest-officer or Police-officer.
 Cattle-trespass Act, 1871, to apply.

I of 1871

Leg. Changes :—[1] Substituted by Act V of 1890.

Case-law :—(a) Extent of powers of Military officer empowered under section, 16 P.R. 1899. (b) *I e*, an officer duly empowered, Rat. Un. Cr. C. 591. (c) Forest land not presumed to be Government land. 1 Weir 768 ; forest lands in South Canara presumed to belong to Government, 28 M. 257 ; but not so in Malabar, 9 M. 175, 187 ; no presumption as regards locality from which produce was taken, 1 Weir 773. (d) Seizure of cattle straying, legal, 22 B. 933 ; see Rat. Un. Cr. C. 11.

70. The Local Government may from time to time, by notification in the local official Gazette, direct that in lieu of the fines fixed by that Act, there shall be levied for each head of cattle impounded under section 69 of this Act such fines as it thinks fit, but not exceeding the following, that is to say:—

For each elephant	...	...	ten rupees.
For each buffalo or camel	...	...	two "
For each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow, or heifer	...	...	one rupee.
For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid	...	...	eight annas.

CHAPTER XII.

OF FOREST-OFFICERS.

Local Government may invest Forest-officers with certain powers.

71. The Local Government may invest any Forest-officer by name, or as holding an office, with the following powers, that is to say:—

- power to enter upon any land and to survey, demarcate and make a map of the same;
- the powers of a Civil Court to compel the attendance of witnesses and the production of documents;
- power to issue a search-warrant under the Code of Criminal Procedure;
- power to hold an inquiry into forest-offences, and, in the course of such inquiry, to receive and record evidence.

Any evidence recorded under clause (d) of this section shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

Forest officers deemed public servants.

72. All Forest-officers shall be deemed to be public servants (a) within the meaning of the Indian Penal Code.

XLV of 1860.

Indemnity for acts done in good faith.

73. No suit (b) shall lie against any public servant for anything done by him in good faith under this Act.

74. Except with the permission in writing of the Local Government, no Forest-officer shall, as principal or agent, trade in timber or other forest-produce, or be or become interested in any lease of any forest or in any contract for working any forest, whether in British or foreign territory.

CHAPTER XIII.

SUBSIDIARY RULES.

Additional powers to make rules.

75. The Local Government may from time to time make rules—

- to prescribe and limit the powers and duties of any Forest-officer under this Act;

Case law :—(a) See 10 B. 124. (b) Legislature has right to limit its liability for loss caused by its servants, 3 Bur. L.T. 150—8 Ind. Cas. 994.

- (b) to regulate the rewards (a) to be paid to officers and informers out of the proceeds of fines and confiscations under this Act ;
- (c) for the preservation, reproduction and disposal of trees (b) and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons ; and,
- (d) generally, to carry out the provisions of this Act.

76. Any person breaking any rule (c) under this Act, for the breach Penalties for of which no special penalty is provided, shall be breach of rules. punished with imprisonment for a term which may extend to one month, or fine which may extend to five hundred rupees, or both.

77. All rules made by the Local Government under this Act shall Rules when to be published in the local official Gazette, and shall have force of law. thereupon, so far as they are consistent with this Act, have the force of law.

[1]

CHAPTER XIV.

MISCELLANEOUS.

78. Every person (d) who exercises any right in a reserved or protected forest, or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle in, such forest, and

every person who is employed by any such person in such forest, and every person in any village contiguous to such forest who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community,

shall be bound to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information he may possess respecting the commission of, or intention to commit, any forest offence, and shall assist any Forest-officer or Police-officer * * * [2]

- (a) in extinguishing any fire occurring in such forest ;
- (b) in preventing any fire which may occur in the vicinity of such forest from spreading to such forest [3] and shall assist any Forest-officer or Police-officer demanding his aid [3] ;
- (c) in preventing the commission in such forest of any forest-offence ; and,
- (d) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

Leg. Changes :—[1] Repealed by Act XV of 1911. [2] Omitted by Act V of 1901. [3] Inserted by Act V of 1901.

Case-law :—(a) One-half of the fine payable as reward, Rat. Un. Cr. C. 622 ; apportionment to be made by Conservator of Forests, Rat. Un. Cr. C. 610 ; *ibid*, 960 ; no order to be made directing payment of reward to complainant, Rat. Un. Cr. C. 873. (b) Section relates to preservation of Government trees, 18 B. 670. (c) *E.g.*, kindling fire at his master's garden which spread to an unclassified forest, 30 P.R. 1916, Cr.—36 Ind. Cas. 188. (d) Does not include person refusing to serve as member of panchayat, 22 B. 769.

Management of forests the joint property of Government and other persons.

79. If the Government and any person be jointly (a) interested in any forest or waste-land, or in the whole or any part of the produce thereof, the Local Government may from time to time either—

- (a) undertake the management of such forest, waste-land or produce, accounting to such person for his interest in the same; or
- (b) issue such regulations for the management of the forest, waste-land or produce by the person so jointly interested as it deems necessary for the management thereof and the interests of all parties therein.

When the Local Government undertakes, under clause (a) of this section, the management of any forest, waste-land or produce, it may from time to time, by notification in the local official Gazette, declare that any of the provisions contained in Chapters II and IV of this Act shall apply to such forest, waste-land or produce, and thereupon such provisions shall apply accordingly.

80. If any person be entitled to a share in the produce of any forest which is the property of Government or over which the Government has proprietary rights, or to any part of the forest-produce of which the Government is entitled, upon the condition of duly performing any service connected with such forest, such share shall be liable to confiscation in the event of the fact being established to the satisfaction of the Local Government that such service is no longer so performed:

Failure to perform service for which a share in produce of Government forest is enjoyed.

Provided that no such share shall be confiscated until the person entitled thereto, and the evidence (if any) which he may produce in proof of the due performance of such service, have been heard by an officer duly appointed in that behalf by the Local Government.

81. (b) All money payable to the Government under this Act, or under any rule made under this Act, or on account of the price of any forest-produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue.

82. When any such money is payable for or in respect of any forest-produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest-officer until such amount has been paid.

Lien on forest-produce for such money.

Power to sell such produce.

If such amount is not paid when due, the Forest-officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

Case-law :—(a) Government possessing partial interest along with another, 13 M. 322. (b) See 20 B. 764.

The surplus (if any), if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to Her Majesty.

Land required under this Act to be deemed to be needed for a public purpose under Land Acquisition Act, 1894.

I of 1894.

83. Whenever it appears to the Local Government that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of the Land Acquisition Act, 1894, section 4.

[1] 84. When any person, in compliance with any rule under this Act, binds himself by any instrument to perform any duty or act, or covenants by any instrument that he, or that he and his servants and agents, will abstain from any act, the whole sum mentioned in such instrument as the amount to be paid in case of a breach of the conditions thereof may, notwithstanding anything in section 74 of the Indian Contract Act, 1872, be recovered from him in case of such breach as if it were an arrear of land-revenue.

Recovery of penalties due under bond.

IX of 1872.

SCHEDULE.

[2] * * * *

THE FORFEITURE ACT, 1857.

(ACT XXV OF 1857.)

[Passed on the 8th August, 1857.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1857	XXV	Forfeiture	Supplemented, Act IX of 1859. Rep. in pt., Act V of 1869. " " Act IX of 1871. " " and am., Act XII of 1891.

An Act [3] * * * * to provide for the adjudication and recovery of forfeitures of property in certain cases.

WHEREAS it is expedient [4] * * * *
Preamble. to provide for the adjudication and recovery of forfeitures in certain cases; It is enacted as follows :—

1. [Forfeiture of property on conviction of Mutiny.] Rep. by the Indian Articles of War (Act V of 1869), Pt. I (c).

Leg. Changes:—[1] Added by Act V of 1890. [2] Schedule repealed by Act X of 1914. [3] The words "to render Officers and Soldiers in the Native Army liable to forfeiture of property for Mutiny, and" were repealed by Act XII of 1891. [4] The words "to render Officers and Soldiers in the Native Army, who shall be convicted of Mutiny, subject to the forfeiture of all their property, and" were repealed by Act XII of 1891.

2. If any person who shall have committed treason or any offence for which, [1] by the Indian Penal Code, section 121 XLV of 1860- or section 122, or the Indian Articles of War, V of 1869,

Adjudication of forfeiture in case of death or escape of offender before conviction of offence for which property is liable to be forfeited.

article 24 (b) [1], his property is declared to be forfeited, shall have been killed, or shall have died, or shall have escaped out of the territories of the East India Company, before he shall have been convicted of the offence, or cannot after diligent search be found; any Court or other authority which might have tried such offender, if he could have been brought to trial, shall, upon the application of the Magistrate or other Officer authorized by Government to make such application, hold an enquiry, and on proof that the person charged with having committed the offence was guilty thereof, and that he is dead, or has escaped out of the territories of the East India Company, or cannot after diligent search be found, shall adjudge that all the property of such offender shall be forfeited (a) to Government.

3. The forfeiture, whether upon conviction of such an offence as

Forfeiture to extend to all property possessed by offender at the date of offence.

aforesaid or upon an adjudication of forfeiture under this Act, shall extend to all property (b) and effects of or to which the offender shall have been possessed or entitled, either at the time of committing the offence, or at the time of the conviction or of the adjudication of forfeiture, or at any intermediate time; and no sale, alienation, or other disposition of such property, made subsequently to the commission of the offence or made at any time with the fraudulent intention of preventing a forfeiture, shall have any effect against the right

Proviso.

of Government to the forfeiture: Provided that nothing in this section contained shall affect any transferee of any negotiable security, who shall prove that he acquired the same in good faith and with due caution for valuable consideration.

4. All immoveable property of the offender, which shall be alienated

Forfeiture of land voluntarily alienated before committing offence.

after the passing of this Act and before the commission of any offence specified in section 2, shall be forfeited in the same manner as if no such alienation had been made, unless the alienation be made in good faith and for valuable consideration, or unless the same shall have been made and registered more than three months before the commission of the offence.

5. The Court, or other authority by which the offender shall be convicted or the forfeiture shall be adjudged, may specify

Court may specify in conviction date of offence.

in the conviction or adjudication the day on which the offence was committed, if it can be ascertained.

6. In any proceeding concerning property alleged to have been

Matters proved by conviction or adjudication.

forfeited, the conviction shall be conclusive evidence that the offence was committed, and (if the day be specified in such conviction) that the offence was committed on that day; if the day be not specified,

Leg. Changes :—[1] Substituted by Act XII of 1891 for "by this Act, or Act XI of 1857, or Act XIV of 1857, or Act XVI of 1857."

Case-law :—(a) See 3 Agra 281. (b) See 17 W.R. 80=8 B.L.R. 83; 23 W.R. 17=12 B.L.R. 445.

the conviction shall be *prima facie* evidence that the offence was committed on the day mentioned in the charge. In any such proceeding, an adjudication of forfeiture under this Act shall be *prima facie* evidence of the commission of the offence, and (if the day be specified in the adjudication) that the offence was committed on that day; if the day be not specified, the adjudication shall be *prima facie* evidence that the offence was committed on the day mentioned in the charge. Any adjudication under this Act shall be filed with and may be proved in the same manner as the records of the principal Court of criminal jurisdiction of the District.

7. After the conviction or adjudication, the Collector or other Chief Officer appointed by Government for the collection of Revenue, or any other Officer whom the Government may specially appoint, may seize and take possession of the forfeited property: if he require the assistance of a Court to enable him to obtain possession of any such property by reason of any dispute respecting the title to the same or for any other cause, the principal Civil Court of original jurisdiction of the District in which the property is situate may, upon the production of a certified copy of the conviction or adjudication, hear and determine in a summary manner upon petition any matter in dispute relating to such property. Any order which may be passed by the Court shall not be subject to appeal; but the party against whom the same may be given, by any Court other than one of Her Majesty's Supreme Courts of Judicature, shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order.

8. In case any person whose property shall have been so adjudged to be forfeited shall within one year after the seizure of any part of his property as a forfeiture surrender himself, and shall upon trial before a competent Court be acquitted of the offence, his property or the proceeds thereof shall be restored ^(b) upon proof, to the satisfaction of the Court, that he did not escape or keep out of the way for the purpose of evading justice.

9. [*Limitation of suits and proceedings.*] *Rep. by the Indian Limitation Act, 1871 (IX of 1871).*

10. In case it shall appear to a Magistrate that there is reasonable ground to suppose that any person is guilty of any offence specified in section 2 of this Act, and that any property liable to forfeiture for the offence is likely to be made away with, it shall be lawful for the Magistrate to attach such property and secure the same until the trial of the offender or until an enquiry for the purpose of adjudication under this Act shall be had.

11. The word "Magistrate" in this Act shall include any Officer competent to commit for trial for any offence specified in section 2 of this Act.

Case-law :—(a) See 3 Agra 291; 14 W.R. 114. (b) Order of restoration cannot be cancelled by the Court which made the order, A.W.N. (1897) 129.

THE FORFEITURE ACT, 1859.

(ACT IX OF 1859.)

[Passed on the 30th April, 1859.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1859	IX	Forfeiture	Rep. in pt., Act VIII of 1868. " Act XII of 1891.

An Act to provide for the adjudication of claims to property seized as forfeited.

WHEREAS it is expedient [1] * * * to remove doubts concerning the powers of officers or other persons to whom commissions may have been issued for the trial of heinous offences in certain districts, and concerning the validity of convictions and adjudications of forfeiture made by such officers or other persons ; It is enacted as follows :—

1 to 15. [Constitution, procedure, etc., of special Commission Courts.]
Rep. by the Repealing Act, 1868 (VIII of 1868).

16. Whenever any person shall have been convicted of an offence for which his property was forfeited to Government, no Court has power in any suit or proceeding relating to such property to question the validity of the conviction.

17. Whenever any person shall have been convicted as above by an officer having power to try and convict, the validity of any such conviction shall not be questioned upon the ground that the record of the conviction does not show in what capacity such officer acted, or that it represents him to have acted in a different capacity from that in which he had power to convict.

18.(a) Whenever any property shall have been attached or seized without either conviction or an adjudication of forfeiture by any officer of Government as property forfeited or liable to be forfeited to Government for an offence for which, upon conviction, the property of the offender would be forfeited, the validity of such attachment or seizure shall not be called in question by any Court or other authority in any suit or proceeding, unless the offender or alleged offender shall, within one year after the seizure of his property, have surrendered himself for trial, and upon trial before a competent Court shall have been or shall be acquitted of the offence, and shall prove to the satisfaction of the Court that he did not escape or keep out of the way for the purpose of evading justice.

Leg. Changes :—[1] Repealed by Act XII of 1891.

Case-law :—(a) See 3 Agra 281.

Nothing in this section shall extend to persons entitled to pardon upon Her Majesty's proclamation published in the Calcutta Gazette Extraordinary, dated the 1st of November, 1858, or to any person who, having surrendered himself within the period of one year after the seizure of his property shall be discharged by order of Government without a prosecution.

19. [Release of property attached as forfeited.] Rep. by the Repealing Act, 1868 (VIII of 1868).

20. (a) Nothing in this Act shall be held to affect the rights of parties not charged with any offence for which upon conviction the property of the offender is forfeited, in respect of any property attached or seized as forfeited or liable to be forfeited to Government: Provided that no suit brought by any party in respect of such property shall be entertained unless it be instituted within the period of one year from the date of the attachment or seizure of the property to which the suit relates.

THE FREIGHT (RAILWAY AND INLAND STEAM- VESSEL) TAX ACT, 1917.

(ACT XIII OF 1917.)

[Passed on the 21st March, 1917.]

An Act to impose a tax on goods carried by Railway or Inland Steam-vessel.

WHEREAS it is expedient to impose a tax on goods carried by railway or inland steam-vessel; It is hereby enacted as follows:—

Short title and commencement. 1. (1) This Act may be called the Freight (Railway and Inland Steam-vessel) Tax Act, 1917.

(2) It shall come into force on the first day of April, 1917.

Definitions. 2. In this Act—

The expression "administration" and the expression "inland steam-vessel" have the meanings respectively attributed to them by the Indian Railways Act, 1890, and the Inland Steam-vessels Act, 1917;

"prescribed" means prescribed by rules made under this Act;

"vessel" means anything made for the conveyance by water of human beings or of property.

Imposition of tax on goods carried by railway or inland steam-vessel. 3. (1) Subject to the provisions of this Act, there shall be levied and collected on goods carried by—

(a) any railway in British India, or

(b) any inland steam-vessel in British India, a tax at the rate specified in that behalf in schedule I.

IX of 1890.
I of 1917.

Explanation : Goods carried on a vessel towed by an inland steam-vessel shall for the purposes of this Act be deemed to be goods carried by the inland steam-vessel.

(2) The tax imposed by sub-section (1) shall be collected by means of a surcharge on freight, by the administration of the railway or the owner of the inland steam-vessel by which the goods are carried, and shall be paid to the prescribed authority in the prescribed manner within the prescribed time, after making such deduction as may be prescribed to meet any expenses incurred in connection with the collection of the tax.

(3) The owner of every inland steam-vessel referred to in sub-section (1) shall prepare and deliver or cause to be prepared and delivered, to the prescribed authority, each quarter, a return, in the prescribed form, of all goods carried by such vessel in respect of which the tax imposed by that sub-section is payable, and shall subscribe, at the foot of such return, a declaration of the truth thereof :

Provided that where goods are deemed to be carried by an inland steam-vessel, the owner of the towed vessel shall, if so required by the owner of the inland steam-vessel certify the particulars of the goods carried on the towed vessel, and shall subscribe at the foot of the certificate a declaration of the truth thereof, and in that case the owner of the inland steam-vessel may incorporate all or any of such particulars in his return and shall only be bound in respect of such particulars to subscribe to his return a declaration that they are true to the best of his knowledge and belief.

(4) Every such return shall be delivered to the prescribed authority within thirty days after the end of the quarter to which it relates.

Rule-making power. 4. (1) The Governor General in Council may, by notification in the Gazette of India, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Governor General in Council may make rules—

- (a) regulating the collection of the tax imposed by this Act, and providing for the authority to which, and the time and manner in which, such tax shall be paid,
- (b) prescribing the form of the returns required by this Act, and the particulars to be contained therein, and the manner in which the same is to be verified,
- (c) prescribing any other method than actual weighment for ascertaining the amount of the tax imposed by this Act, and
- (d) providing for any other matter which by this Act is to be prescribed.

(3) In making any rule under this section, the Governor General in Council may direct that a breach of it shall be punishable with fine which may extend to five hundred rupees.

Offences. 5. The offences mentioned in column 1 of Schedule II shall be punishable to the extent mentioned in column 2 thereof with reference to such offences respectively.

6. The Governor General in Council may, by notification in the Gazette of India, exempt, either in whole or in part, and either absolutely or subject to such conditions as he may prescribe, any goods or class of goods from the tax imposed under this Act.

SCHEDULE I.

(See section 3.)

Goods.	Unit.	Rate.
Coal, coke, and firewood	Per Indian maund of 82 2/7 lbs. avoirdupois weight.	One pie.
All other goods	Per Indian maund of 82 2/7 lbs. avoirdupois weight.	Two pies.

SCHEDULE II.

(See section 5.)

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|---|--|
| <p>(1) Omitting to make any return or certificate referred to in section 3 (3) or refusing to sign or complete the same.</p> <p>(2) Making and delivering any such return or certificate containing any statement not true to the best of the information and belief of the person making the same.</p> | <p>Fine not exceeding one thousand rupees.</p> <p>The penalty provided in section 177 of the Indian Penal Code for furnishing false information to a public servant.</p> |
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THE FUGITIVE OFFENDERS ACT, 1881.

(44 & 45 VICT., C. 69.)

[Passed on the 27th August, 1881.]

An Act to amend the law with respect to Fugitive Offenders in Her Majesty's Dominions, and for other purposes connected with the Trial of Offenders.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say)

Short title 1. This Act may be cited as the Fugitive Offenders Act, 1881.

PART I.

Return of fugitives.

2. Where a person accused of having committed an offence (to which this part of this Act applies) in one part of Her Majesty's dominions has left that part, such person (in this Act referred to as a fugitive from that part) if found in another part of Her Majesty's dominions, shall be liable to be apprehended and returned in manner provided by this Act to the part from which he is a fugitive.

Liability of fugitive to be apprehended and returned.

A fugitive may be so apprehended under an endorsed warrant or a provisional warrant.

3. Where a warrant has been issued in one part of Her Majesty's dominions for the apprehension of a fugitive from that part, any of the following authorities in another part of Her Majesty's dominions in or on the way to which the fugitive is or is suspected to be; (that is to say,) **Endorsing of warrant for apprehension of fugitive.**

- (1) A Judge of a superior Court in such part; and
- (2) in the United Kingdom a Secretary of State and one of the Magistrates of the metropolitan Police Court in Bow street; and
- (3) in a British possession the governor of that possession, if satisfied that the warrant was issued by some person having lawful authority to issue the same, may endorse such warrant in manner provided by this Act, and the warrant so endorsed shall be sufficient authority to apprehend the fugitive in the part of Her Majesty's dominions in which it is endorsed, and bring him before a Magistrate.

4. A Magistrate of any part of Her Majesty's dominions may issue a provisional warrant for the apprehension of a fugitive who is or is suspected of being in or on his way to that part on such information, and under such circumstances, as would in his opinion justify the issue of a warrant if the offence of which the fugitive is accused had been committed within his jurisdiction, and such warrant may be backed and executed accordingly. **Provisional warrant for apprehension of fugitives.**

A Magistrate issuing a provisional warrant shall forthwith send a report of the issue, together with the information or a certified copy thereof, if he is in the United Kingdom, to a Secretary of State, and if he is in a British possession, to the governor of that possession, and the Secretary of State or Governor may, if he think fit, discharge the person apprehended under such warrant.

5. A fugitive when apprehended shall be brought before a Magistrate, who (subject to the provisions of this Act) shall hear the case in the same manner and have the same jurisdiction and powers, as near as may be (including the power to remand and admit to bail), as if the fugitive were charged with an offence committed within his jurisdiction. **Dealing with fugitive when apprehended.**

If the endorsed warrant for the apprehension of the fugitive is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) according to the law ordinarily administered by the Magistrate, raises a strong or probable presumption that the fugitive committed the offence mentioned in the warrant, and that the offence is one to which this part of this Act applies, the Magistrate shall commit the fugitive to prison to await his return, and shall forthwith send a certificate of the committal and such report of the case as he may think fit, if in the United Kingdom to the Secretary of State, and if in a British possession to the governor of that possession.

Where the Magistrate commits the fugitive to prison he shall inform the fugitive that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of *habeas corpus*, or other like process.

A fugitive apprehended on a provisional warrant may be from time to time remanded for such reasonable time not exceeding seven days at any one time, as under the circumstances seems requisite for the production of an endorsed warrant.

6. Upon the expiration of fifteen days after a fugitive has been committed to prison to await his return, or if a writ of *habeas corpus* or other like process is issued with reference to such fugitive by a superior Court, after the final decision of the Court in the case,

(1) if the fugitive is so committed in the United Kingdom, a Secretary of State; and

(2) if the fugitive is so committed in a British possession, the governor of that possession,

may, if he thinks it just, by warrant under his hand order that fugitive to be returned to the part of Her Majesty's dominions from which he is a fugitive, and for that purpose to be delivered into the custody of the persons to whom the warrant is addressed, or some one or more of them, and to be held in custody, and conveyed by sea or otherwise to the said part of Her Majesty's dominions, to be dealt with there in due course of law as if he had been there apprehended, and such warrant shall be forthwith executed according to the tenor thereof.

The governor or other chief officer of any prison, on request of any person having the custody of the fugitive under any such warrant, and on payment or tender of a reasonable amount for expenses, shall receive such fugitive and detain him for such reasonable time as may be requested by the said person for the purpose of the proper execution of the warrant.

7. If a fugitive who, in pursuance of this part of this Act, has been committed to prison in any part of Her Majesty's dominions to await his return, is not conveyed out of that part within one month after such committal, a superior Court, upon application by or on behalf of the fugitive, and upon proof that reasonable notice of the intention to make such application has been given, if the said part is the United Kingdom to a Secretary of State, and if the said part is a British possession to the governor of the possession, may, unless sufficient cause is shown to the contrary, order the fugitive to be discharged out of custody.

8. Where a person accused of an offence and returned in pursuance of this part of this Act to any part of Her Majesty's dominions, either is not prosecuted for the said offence, within six months after his arrival in that part or is acquitted of the said offence then if that part is the United Kingdom a Secretary of State, and if that part is a British possession the governor of that possession, may, if he think fit, on the request of such person, cause him to be sent

back free of cost and with as little delay as possible to the part of Her Majesty's dominions in or on his way to which he was apprehended.

9. This part of this Act shall apply to the following offences, namely, to treason and piracy, and to every offence whether called felony, misdemeanour, crime, or by any other name, which is for the time being punishable in the part of Her Majesty's dominions in which it was committed, either on indictment or information, by imprisonment with hard labour for a term of twelve months or more, or by any greater punishment; and for the purposes of this section, rigorous imprisonment, and any confinement in a prison combined with labour, by whatever name it is called, shall be deemed to be imprisonment with hard labour.

This part of this Act shall apply to an offence notwithstanding that by the law of the part of Her Majesty's dominions in or on his way to which the fugitive is or is suspected of being it is not an offence, or not an offence to which this part of this Act applies; and all the provisions of this part of this Act, including those relating to a provisional warrant and to a committal to prison, shall be construed as if the offence were in such last-mentioned part of Her Majesty's dominions an offence to which this part of this Act applies.

10. Where it is made to appear to a superior court that by reason of the trivial nature of the case, or by reason of the application for the return of a fugitive not being made in good faith in the interests of justice or otherwise, it would, having regard to the distance, to the facilities for communication and to all the circumstances of the case, be unjust or oppressive or too severe a punishment to return the fugitive either at all or until the expiration of a certain period, such court may discharge the fugitive, either absolutely or on bail, or order that he shall not be returned until after the expiration of the period named in the order, or may make such other order in the premises as to the court seems just.

11. In Ireland the Lord Lieutenant or Lords Justices or other chief governor or governors of Ireland, also the chief secretary of such Lord Lieutenant may, as well as a Secretary of State, execute any portion of the powers by this part of this Act vested in a Secretary of State.

PART II.

Inter-Colonial Backing of Warrants, and Offences. Application of Part of Act.

12. This part of this Act shall apply only to those groups of British possessions to which, by reason of their contiguity or otherwise, it may seem expedient to Her Majesty to apply the same.

It shall be lawful for Her Majesty from time to time by Order in Council to direct that this part of this Act shall apply to the group of British possessions mentioned in the order, and by the same or any

subsequent order to except certain offences from the application of this part of this Act, and to limit the application of this part of this Act by such conditions, exceptions, and qualifications as may be deemed expedient.

Backing of Warrants.

13. Where in a British possession of a group to which this part of this Act applies a warrant has been issued for the apprehension of a person accused of an offence punishable by law in that possession, and such person is or is suspected of being in or on the way to another British possession of the same group, a magistrate in the last-mentioned possession, if satisfied that the warrant was issued by a person having lawful authority to issue the same, may endorse such warrant in the manner provided by this Act, and the warrant so endorsed shall be a sufficient authority to apprehend, within the jurisdiction of the endorsing magistrate, the person named in the warrant, and bring him before the endorsing magistrate or some other magistrate in the same British possession.

14. The magistrate before whom a person so apprehended is brought, if he is satisfied that the warrant is duly authenticated as directed by this Act and was issued by a person having lawful authority to issue the same, and is satisfied on oath that the prisoner is the person named or otherwise described in the warrant, may order such prisoner to be returned to the British possession in which the warrant was issued, and for that purpose to be delivered into the custody of the persons to whom the warrant is addressed, or any one or more of them, and to be held in custody and conveyed by sea or otherwise into the British possession in which the warrant was issued, there to be dealt with according to law as if he had been there apprehended. Such order for return may be made by warrant under the hand of the magistrate making it, and may be executed according to the tenor thereof.

A magistrate shall, so far as is requisite for the exercise of the powers of this section, have the same power, including the power to remand and admit to bail a prisoner, as he has in the case of a person apprehended under a warrant issued by him.

15. Where a person required to give evidence on behalf of the prosecutor or defendant on a charge for an offence punishable by law in a British possession of a group to which this part of this Act applies, is or is suspected of being in or on his way to any other British possession of the same group, a judge, magistrate, or other officer who would have lawful authority to issue a summons, requiring the attendance of such witness, if the witness were within his jurisdiction, may issue a summons for the attendance of such witness, and a magistrate in any other British possession of the same group, if satisfied that the summons was issued by some judge, magistrate, or officer having lawful authority as aforesaid, may endorse

the summons with his name; and the witness, on service in that possession of the summons, so endorsed, and on payment or tender of a reasonable amount for his expenses, shall obey the summons, and in default shall be liable to be tried and punished either in the possession in which he is served or in the possession in which the summons was issued, and shall be liable to the punishment imposed by the law of the possession in which he is tried for the failure of a witness to obey such a summons. The expression "summons" in this section includes any *subpoena* or other process for requiring the attendance of a witness.

16. A magistrate in a British possession of a group to which this part of this Act applies, before the endorsement in pursuance of this part of this Act of a warrant for the apprehension of any person, may issue a provisional warrant for the apprehension of that person, on such information and under such circumstances as would in his opinion justify the issue of a warrant if the offence of which such person is accused were an offence punishable by the law of the said possession, and had been committed within his jurisdiction, and such warrant may be backed and executed accordingly; provided that a person arrested under such provisional warrant shall be discharged unless the original warrant is produced and endorsed within such reasonable time as may under the circumstances seem requisite.

17. If a prisoner in a British possession whose return is authorised in pursuance of this part of this Act is not conveyed out of that possession within one month after the date of the warrant ordering his return, a magistrate or a superior court, upon application by or on behalf of the prisoner, and upon proof that reasonable notice of the intention to make such application has been given to the person holding the warrant and to the chief officer of the police of such possession or of the province or town where the prisoner is in custody, may, unless sufficient cause is shown to the contrary, order such prisoner to be discharged out of custody.

Any order or refusal to make an order of discharge by a magistrate under this section shall be subject to appeal to a superior court.

18. Where a prisoner accused of an offence is returned in pursuance of this Act to a British possession, and either is not prosecuted for the said offence within six months after his arrival in that possession or is acquitted of the said offence, the governor of that possession, if he thinks fit, may, on the requisition of such person, cause him to be sent back, free of cost, and with as little delay as possible, to the British possession in or on his way to which he was apprehended.

19. Where the return of a prisoner is sought or ordered under this part of this Act, and it is made to appear to a magistrate or to a superior court that by reason of the trivial nature of the case, or by reason of the application for the return of such prisoner not being made in good faith in

the interests of justice or otherwise, it would, having regard to the distance to the facilities of communication, and to all the circumstances of the case, be unjust or oppressive, or too severe a punishment, to return the prisoner either at all or until the expiration of a certain period, the court or magistrate may discharge the prisoner either absolutely or on bail, or order that he shall not be returned until after the expiration of the period named in the order, or may make such other order in the premises as to the magistrate or court seems just.

Any order or refusal to make an order of discharge by a magistrate under this section shall be subject to an appeal to a superior court.

PART III.

Trial, etc., of offences.

Offences committed on boundary of two adjoining British possessions.

20. Where two British possessions adjoin, a person accused of an offence committed on or within the distance of five hundred yards from the common boundary of such possession may be apprehended, tried, and punished in either of such possessions.

21. Where an offence is committed on any person or in respect of any property in or upon any carriage, cart, or vehicle whatsoever employed in a journey, or on board any vessel whatsoever employed in a navigable river, lake, canal, or inland navigation, the person accused of such offence may be tried in any British possession through a part of which such carriage, cart, vehicle, or vessel passed in the course of the journey or voyage during which the offence was committed; and where the side, bank, centre, or other part of the road, river, lake, canal, or inland navigation along which the carriage, cart, vehicle, or vessel passed in the course of such journey or voyage is the boundary of any British possession, a person may be tried for such offence in any British possession of which it is the boundary:

Provided that nothing in this section shall authorise the trial for such offence of a person who is not a British subject, where it is not shown that the offence was committed in a British possession.

22. A person accused of the offence (under whatever name it is known) of swearing or making any false deposition, or of giving or fabricating any false evidence, for the purpose of this Act, may be tried either in the part of Her Majesty's dominions in which such deposition or evidence is used, or in the part in which the same was sworn, made, given, or fabricated, as the justice of the case may require.

Trial of offence of false swearing or giving false evidence.

23. Where any part of this Act provides for the place of trial of a person accused of an offence, that offence shall, for all purposes of and incidental to the apprehension, trial, and punishment of such person, and of and incidental to any proceedings and matters preliminary, incidental to, or consequential thereon, and of and incidental to the jurisdiction of

Supplemental provision as to trial of person in any place.

any court, constable, or officer with reference to such offence, and to any person accused of such offence, be deemed to have been committed in any place in which the person accused of the offence can be tried for it, and such person may be punished in accordance with the Courts Colonial^{37 & 38 Vict.,} Jurisdiction Act, 1874. ^{c. 27.}

24. Where a warrant for the apprehension of a person accused of an offence has been endorsed in pursuance of any part of this Act in any part of Her Majesty's dominions, or where any part of the Act provides for the place of trial of a person accused of an offence, every court and magistrate of the part in which the warrant is endorsed, or the person accused of the offence can be tried shall have the same power of issuing a warrant to search for any property alleged to be stolen or to be otherwise unlawfully taken or obtained by such person, or otherwise to be the subject of such offence, as that court or magistrate would have if the property had been stolen or otherwise unlawfully taken or obtained, or the offence had been committed wholly within the jurisdiction of such court or magistrate.

25. Where a person is in legal custody in a British possession either in pursuance of this Act or otherwise, and such person is required to be removed in custody to another place in or belonging to the same British possession, such person, if removed by sea in a vessel belonging to Her Majesty or any of Her Majesty's subjects, shall be deemed to continue in legal custody until he reaches the place to which he is required to be removed; and the provisions of this Act with respect to the retaking of a prisoner who has escaped, and with respect to the trial and punishment of a person guilty of the offence of escaping or attempting to escape, or aiding or attempting to aid a prisoner to escape, shall apply to the case of a prisoner escaping while being lawfully removed as aforesaid, in like manner as if he were being removed in pursuance of a warrant endorsed in pursuance of this Act.

PART IV.

SUPPLEMENTAL.

Warrants and Escape.

26. An endorsement of a warrant in pursuance of this Act shall be signed by the authority endorsing the same, and shall authorise all or any of the persons named in the endorsement, and of the persons to whom the warrant was originally directed, and also every constable to execute the warrant within the part of Her Majesty's dominions or place within which such endorsement is by this Act made a sufficient authority, by apprehending the person named in it, and bringing him before some magistrate in the said part or place, whether the magistrate named in the endorsement or some other.

For the purposes of this Act every warrant, summons, subpoena and process, and every endorsement made in pursuance of this Act thereon shall remain in force, notwithstanding that the person signing the warrant or such endorsement dies or ceases to hold office.

27. Where a fugitive or prisoner is authorised to be returned to any part of Her Majesty's dominions in pursuance of Part One or Part Two of this Act, such fugitive or prisoner may be sent thither in any ship belonging to Her Majesty or to any of her subjects.

Conveyance of fugitives and witnesses.

For the purpose aforesaid, the authority signing the warrant for the return may order the master of any ship belonging to any subject of Her Majesty bound to the said part of Her Majesty's dominions to receive and afford a passage and subsistence during the voyage to such fugitive or prisoner, and to the person having him in custody, and to the witnesses, so that such master be not required to receive more than one fugitive or prisoner for every hundred tons of his ship's registered tonnage, or more than one witness for every fifty tons of such tonnage.

The said authority shall endorse or cause to be endorsed upon the agreement of the ship such particulars with respect to any fugitive prisoner or witness sent in her as the Board of Trade from time to time require.

Every such master shall, on his ship's arrival in the said part of Her Majesty's dominions, cause such fugitive or prisoner, if he is not in the custody of any person, to be given into the custody of some constable, there to be dealt with according to law.

Every master who fails on payment or tender of a reasonable amount for expenses to comply with an order made in pursuance of this section, or to cause a fugitive or prisoner committed to his charge to be given into custody as required by this section, shall be liable on summary conviction to a fine not exceeding fifty pounds, which may be recovered in any part of Her Majesty's dominions in like manner as a penalty of the same amount under the Merchant Shipping Act, 1854, and the Acts amending the same.

17 & 18 Vict., c. 104.

28. If a prisoner escape, by breach of prison or otherwise, out of the custody of a person acting under a warrant issued or endorsed in pursuance of this Act, he may be retaken in the same manner as a person accused of a crime against the law of that part of Her Majesty's dominions to which he escapes may be retaken upon an escape.

Escape of prisoner from custody.

A person guilty of the offence of escaping or of attempting to escape, or of aiding or attempting to aid a prisoner to escape, by breach of prison or otherwise, from custody under any warrant issued or endorsed in pursuance of this Act, may be tried in any of the following parts of Her Majesty's dominions, namely, the part to which and the part from which the prisoner is being removed, and the part in which the prisoner escapes, and the part in which the offender is found.

Evidence.

29. A magistrate may take depositions for the purposes of this Act in the absence of a person accused of an offence in like manner as he might take the same if such person were present and accused of the offence before him.

Depositions to be evidence and authentication of depositions and warrants.

Depositions (whether taken in the absence of the fugitive or otherwise), and copies thereof, and official certificates of or judicial documents stating facts, may, if duly authenticated, be received in evidence in proceedings under this Act :

Provided that nothing in this Act shall authorise the reception of any such depositions, copies, certificates, or documents in evidence against a person upon his trial for an offence.

Warrants and depositions, and copies thereof, and official certificates of or judicial documents stating facts, shall be deemed duly authenticated for the purposes of this Act if they are authenticated in manner provided for the time being by law, or if they purport to be signed by or authenticated by the signature of a judge, magistrate, or officer of the part of Her Majesty's dominions in which the same are issued, taken, or made, and are authenticated either by the oath of some witness, or by being sealed with the official seal of a Secretary of State, or with the public seal of a British possession, or with the official seal of a governor of a British possession, or of a colonial secretary, or of some secretary or minister administering a department of the government of a British possession.

And all courts and magistrates shall take judicial notice of every such seal as is in this section mentioned, and shall admit in evidence without further proof the documents authenticated by it.

Miscellaneous.

Provision as to
exercise of jurisdic-
tion by magistrates.

30. The jurisdiction under Part One of this Act to hear a case and commit a fugitive to prison to await his return shall be exercised,—

- (1) in England, by a chief magistrate of the metropolitan police courts, or one of the other magistrates of the metropolitan police court at Bow street ; and
- (2) in Scotland, by the sheriff or sheriff substitute of the county of Edinburgh ; and
- (3) in Ireland, by one of the police magistrates of the Dublin metropolitan police district ; and
- (4) in a British possession, by any judge, justice of the peace, or other officer having the like jurisdiction as one of the magistrates of the metropolitan police court in Bow street, or by such other court, judge, or magistrate as may be from time to time provided by an Act or ordinance passed by the legislature of that possession.

If a fugitive is apprehended and brought before a magistrate who has no power to exercise the jurisdiction under this Act in respect of that fugitive, that magistrate shall order the fugitive to be brought before some magistrate having that jurisdiction, and such order shall be obeyed.

Power as to
making and revoca-
tion of Orders in
Council.

31. It shall be lawful for Her Majesty in Council from time to time to make Orders for the purposes of this Act, and to revoke and vary any Order so made ; and every Order so made shall, while it is in force, have the same effect as if it were enacted in this Act.

An Order in Council made for the purposes of this Act shall be laid before Parliament as soon as may be after it is made if Parliament is then in session, or if not, as soon as may be after the commencement of the then next session of Parliament.

Power of legislature of British possession to pass laws for carrying into effect this Act.

32. If the legislature of a British possession pass any Act or ordinance—

- (1) for defining the offences committed in that possession to which this Act or any part thereof is to apply ; or
- (2) for determining the court, judge, magistrate, officer, or person by whom and the manner in which any jurisdiction or power under this Act is to be exercised ; or
- (3) for payment of the costs incurred in returning a fugitive or a prisoner, or in sending him back if not prosecuted or if acquitted, or otherwise in the execution of this Act ; or
- (4) in any manner for the carrying of this Act or any part thereof into effect in that possession, it shall be lawful for Her Majesty by Order in Council to direct, if it seems to Her Majesty in Council necessary or proper for carrying into effect the objects of this Act, that such Act or ordinance, or any part thereof, shall with or without modification or alteration be recognised and given effect to throughout Her Majesty's dominions and on the high seas as if it were part of this Act.

Application of Act.

33. Where a person accused of an offence can, by reason of the nature of the offence, or of the place in which it was committed, or otherwise, be under this Act or otherwise, tried for or in respect of the offence is more than one part of Her Majesty's dominions, a warrant for the apprehension of such person may be issued in any part of Her Majesty's dominions in which he can, if he happens to be there, be tried ; and each part of this Act shall apply as if the offence had been committed in the part of Her Majesty's dominions where such warrant is issued, and such person may be apprehended and returned in pursuance of this Act, notwithstanding that in the place in which he is apprehended a court has jurisdiction to try him :

Provided that if such person is apprehended in the United Kingdom a Secretary of State, and if he is apprehended in a British possession, the Governor of such possession, may, if satisfied that, having regard to the place where the witnesses for the prosecution and for the defence are to be found, and to all the circumstances of the case, it would be conducive to the interests of justice so to do, order such person to be tried in the part of Her Majesty's dominions in which he is apprehended, and in such case any warrant previously issued for his return shall not be executed.

34. Where a person convicted by a Court in any part of Her Majesty's dominions, of an offence committed either in Her Majesty's dominions or elsewhere, is unlawfully at large before the expiration of his sentence, each part of this Act shall apply to such person, so far as is consistent with the tenor thereof, in like manner as it applies to a person accused of the like offence committed in the part of Her Majesty's dominions in which such person was convicted.

35. Where a person accused of an offence is in custody in some part of Her Majesty's dominions, and the offence is one for or in respect of which, by reason of the nature thereof or of the place in which it was committed or otherwise, a person may under this Act or otherwise be tried in some other part of Her Majesty's dominions, in such case a superior court, and also if such person is in the United Kingdom a Secretary of State, and if he is in a British possession the governor of that possession, if satisfied that, having regard to the place where the witnesses for the prosecution and for the defence are to be found, and to all the circumstances of the case, it would be conducive to the interests of justice so to do, may by warrant direct the removal of such offender to some other part of Her Majesty's dominions in which he can be tried, and the offender may be returned, and, if not prosecuted or acquitted, sent back free of cost in like manner as if he were a fugitive returned in pursuance of Part One of this Act and the warrant were a warrant for the return of such fugitive, and the provisions of this Act shall apply accordingly.

36. It shall be lawful for Her Majesty from time to time by Order in Council to direct that this Act shall apply as if, subject to the conditions, exceptions, and qualifications (if any) contained in the Order, any place out of Her Majesty's dominions in which Her Majesty has jurisdiction, and which is named in the Order, were a British possession, and to provide for carrying into effect such application.

37. This Act shall extend to the Channel Islands and Isle of Man as if they were part of England and of the United Kingdom, and the United Kingdom and those islands shall be deemed for the purpose of this Act to be one part of Her Majesty's dominions; and a warrant endorsed in pursuance of Part One of this Act may be executed in every place in the United Kingdom and the said islands accordingly.

38. This Act shall apply where an offence is committed before the commencement of this Act, or, in the case of Part Two of this Act, before the application of that part to a British possession or to the offence, in like manner as if such offence had been committed after such commencement or application.

Definitions and Repeal.

39. In this Act, unless the context otherwise requires,—the expression “Secretary of State” means one of Her Majesty’s Principal Secretaries of State :

the expression “British possession” means any part of Her Majesty’s dominions, exclusive of the United Kingdom, the Channel Islands, and Isle of Man ; all territories and places within Her Majesty’s dominions which are under one legislature shall be deemed to be one British possession and one part of Her Majesty’s dominions :

the expression “legislature,” where there are local legislatures as well as a central legislature, means the central legislature only :

the expression “governor” means any person or persons administering the Government of a British possession, and includes the Governor and Lieutenant-Governor of any part of India :

the expression “constable” means, out of England, any policeman or officer having the like powers and duties as a constable in England :

the expression “magistrate” means, except in Scotland, any Justice of the Peace, and in Scotland means a sheriff or sheriff substitute and in the Channel Islands, Isle of Man, and a British possession means any person having authority to issue a warrant for the apprehension of persons accused of offences and to commit such persons for trial :

the expression “offence punishable on indictment” means as regards India, an offence punishable on a charge or otherwise :

the expression “oath” includes affirmation or declaration in the case of persons allowed by law to affirm or declare instead of swearing, and the expression “swear” and other words relating to an oath or swearing shall be construed accordingly :

the expression “deposition” includes any affidavit, affirmation, or statement made upon oath as above defined :

the expression “superior Court” means :

- (1) in England, Her Majesty’s Court of Appeal and High Court of Justice ; and
- (2) in Scotland, the High Court of Judiciary ; and
- (3) in Ireland, Her Majesty’s Court of Appeal and Her Majesty’s High Court of Justice at Dublin ; and
- (4) in a British possession, any Court having in that possession the like criminal jurisdiction to that which is vested in the High Court of Justice in England, or such court or judge as may be determined by any Act or ordinance of that possession.

THE GENERAL CLAUSES ACT, 1897.

(ACT X OF 1897.)

[Passed on the 11th March, 1897.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1868	I	General Clauses Act	Rep., Act X of 1897.
1872	I	Evidence Act	Rep. in pt., Act X of 1897.
1887	I	General Clauses Act	Rep., Act X of 1897.
1891	XII	Repealing and Amending Act.	Rep. in pt., Act X of 1897.
1897	X	General Clauses	Rep. in pt. and Am., Act I of 1903. Rep. in pt. and Am., Act X and XVII of 1914. Am., Act XXIV of 1917.

An Act to consolidate and extend the General Clauses Acts, 1868 and 1887.

WHEREAS it is expedient to consolidate and extend the General Clauses Acts, 1868 and 1887; It is hereby enacted as follows:—

I of 1868
I of 1887.

Preliminary.

Short title and commencement. 1. (1) This Act may be called the General Clauses Act, 1897: [1]*

(2) It shall come into force at once.

2. [Repeal] Rep. by the Repealing and Amending Act, 1903 (I of 1903).

General Definitions.

3. In this Act, and in all Acts^(a) of the Governor General in Council and Regulations made after the commencement of of this Act, unless there is anything repugnant in the subject or context,—

(1) "abet," with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code:

XLV of 1860.

(2) "act," used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions:

(3) "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing:

[2](3-a) "Assam Act" shall mean an Act made by the Chief Commissioner of Assam in Council under the Indian Councils Acts, 1861 to 1909 [2], [3] or the Government of India Act, 1915 [3]:

Leg. Changes:—[1] The word ' and ' was repealed by Act X of 1914. [2] Inserted by Act X of 1914. [3] Added by Act XXIV of 1917.

Case-law:—(a) Oudh Rent Act, 1886, 16 O.C. 341; not those passed by Local Legislatures, 1 Bom. L.R. 164.

(4) "barrister" shall mean a barrister of England or Ireland or a member of the Faculty of Advocates in Scotland:

"Barrister."

[1] (5) "Bengal Act" shall mean in the case of Acts passed prior to the 1st April, 1912, an Act made by the Lieutenant-Governor of Bengal in Council under the Indian Councils Act, 1861, or the Indian Councils Acts, 1861 and 1892, or the Indian Councils Acts, 1861 to 1909, and in the case of Acts passed after that date, an Act made by the Governor of the Presidency of Fort William in Bengal in Council under the Indian Councils Acts, 1861 to 1909 [1], [2] or the Government of India Act, 1915 [2]:

"Bengal Act."

24 & 25 Vict.,
c. 67; 55 & 56
Vict., c. 14.

[3] (5-a) "Bihar and Orissa Act" shall mean an Act made by the Lieutenant-Governor of Bihar and Orissa in Council under the Indian Councils Acts, 1861 to 1909 [3], [2] or the Government of India Act, 1915 [2]:

"Bihar and Orissa Act."

24 & 25 Vict.,
c. 67; 55 & 56
Vict., c. 14.

(6) "Bombay Act" shall mean an Act made by the Governor of Bombay in Council under the Indian Councils Act, 1861, or the Indian Councils Acts, 1861 and 1892, [4] or the Indian Councils Acts, 1861 to 1909 [4], [2] or the Government of India Act, 1915 [2]:

"Bombay Act."

(7) "British India" shall mean all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India:

"British India."

(8) "British possession" shall mean any part of Her Majesty's dominions, exclusive of the United Kingdom, and, where parts of those dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession:

"British possession."

24 & 25 Vict.,
c. 67; 55 & 56
Vict., c. 14.

[5] (8-a) "Burma Act" shall mean an Act made by the Lieutenant-Governor of Burma in Council under the Indian Councils Acts, 1861 and 1892 [3], [4] or the Indian Councils Acts, 1861 to 1909 [4] or [2] the Government of India Act, 1915 [2]:

"Burma Act."

[6] (8-b) "Central Provinces Act" shall mean an Act made by the Chief Commissioner of the Central Provinces in Council under the Indian Councils Acts, 1861 to 1909 [6], [2] or the Government of India Act, 1915 [2]:

"Central Provinces Act."

(9) "Chapter" shall mean, a Chapter of the Act or Regulation in which the word occurs:

"Chapter."

(10) "Collector" shall mean, in a Presidency-town, the Collector of Calcutta, Madras or Bombay, as the case may be, and elsewhere the chief officer in charge of the revenue-administration of a district:

"Collector."

Leg. Changes:—[1] Substituted by Act X of 1914. [2] Added by Act XXIV of 1917. [3] Inserted by Act X of 1914. [4] Added by Act X of 1914. [5] Added by Act I of 1909. [6] Inserted by Act XVII of 1914.

(11) "Colony" shall mean any part of Her Majesty's dominions exclusive of the British Islands and of British India, and, where parts of those dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony :

"Commencement." (12) "Commencement," used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force :

"Commissioner," (13) "Commissioner" shall mean the chief officer in charge of the revenue-administration of a division :

"Consular officer." (14) "Consular officer" shall include consul general, consul, vice-consul, consular agent, pro-consul and any person for the time being authorized to perform the duties of consul-general, consul, vice-consul or consular agent :

"District Judge." (15) "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction :

"Document." (16) "document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used for the purpose of recording that matter :

"Eastern Bengal and Assam Act." (1) (16-a) "Eastern Bengal and Assam Act" shall mean an Act made by the Lieutenant-Governor of Eastern Bengal and Assam in Council under the Indian Councils Acts, c. 67; 55 & 56 Vict., c. 14. 1861 and 1892, or the Indian Councils Acts, 1861 to 1909 :

"Enactment." (17) "enactment" shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid :

"Father." (18) "father," in the case of any one whose personal law permits adoption, shall include an adoptive father :

"Financial year." (19) "Financial year" shall mean the year commencing on the first day of April :

"Good faith" (20) a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not :

"Government" (21) "Government" or "the Government" shall include the Local Government as well as the Government of India :

(22) "Government of India" shall mean the Governor General in Council or, during the absence of the Governor General from his Council, the President in Council, or the Governor General alone, as regards the powers which may be lawfully exercised by them or him respectively :

"Her Majesty" or "the Queen." (23) "Her Majesty" or "the Queen" shall include Her successors :

(24) "High Court," used with reference to civil proceedings, shall mean the highest Civil Court of appeal in the part of British India in which the Act or Regulation containing the expression operates :

(25) "immoveable property" shall include land (a), benefits (b) to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth :

(26) "imprisonment" shall mean imprisonment (c) of either description as defined in the Indian Penal Code :

XLV of 1860.

(27) "India" shall mean British India, together with any territories of any Native Prince or Chief under the suzerainty of Her Majesty exercised through the Governor General of India or through any Governor or other officer subordinate to the Governor General of India :

(28) "local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund :

(29) "Local Government" shall mean the person authorized by law to administer executive Government in the part of British India in which the Act or Regulation containing the expression operates, and shall include a Chief Commissioner :

(30) "Madras Act" shall mean an Act made by the Governor of Fort St. George in Council under [1] the Indian Councils Act, 1861, or [1] the Indian Councils Acts, 1861, and 1892 [2] or the Indian Councils Acts, 1861 to 1909 [2], [3] or the Government of India Act, 1915 [3] :

24 & 25 Vict.,
c. 67 ; 55 & 56
Vict., c. 14.

(31) "Magistrate" (d) shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force :

Leg Changes :—[1] Added by Act I of 1903. [2] Added by Act X of 1914. [3] Added by Act XXIV of 1917.

Case-law :—(a) *I g.*, standing Crops, 14 A. 30 ; 11 M. 193 ; 11 N.L.R. 18 ; 18 M.L. T. 532 ; standing timber, 7 Cr. L.J. 152 ; trees till out, 112 P.R. 1884 ; doors, 16 M.L. T. 429 ; growing grass, 13 B. 87 ; 7 C.L.J. 152 ; a *hat*, 22 C. 38 ; interest of a simple mortgagee, 5 O.W.N. 827 ; right to future fruit crops, 66 P.R. 1900 ; right to use water of a perennial stream, 11 P.R. 1898 ; *jalkar*, 20 C. 446 ; jaghir's income, 4 P.R. 1894 ; but not a mortgage decree, 23 C. 450 ; 4 O.W.N. 5. (b) Right to ferry, 35 A. 156. (c) *E. g.*, imprisonment under S. 488, Cr. P. C., 9 A. 240. (d) Whether includes Village Magistrate, 27 M. 223.

(32) "master," used with reference to a ship, shall mean any "Master" (of a person (except a pilot or harbour-master) having for the time being control or charge of the ship:

"Month," (33) "month" (a) shall mean a month reckoned according to the British calendar:

"Moveable property," (34) "moveable property" shall mean property of every description, except immoveable property:

(35) [1] "United Provinces of Agra [1] and Oudh Act" shall mean an Act made by the Lieutenant-Governor of the [1] United Provinces of Agra [1] and Oudh in Council under [2] the Indian Councils Act, 1861, or [2] the Indian Councils Acts, 1861 and 1892. 24 & 25 Vict., c. 67; 55 & 56 Vict., c. 14.

(36) "oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing:

"Offence," (37) "offence" shall mean any act or omission made punishable by any law for the time being in force:

"Part," (38) "Part" shall mean a Part of the Act or Regulation in which the word occurs:

"Person," (39) "person" shall include any company or association or body of individuals, whether incorporated or not:

"Political Agent," (40) "Political Agent" shall include—
 (a) the principal officer representing the Government in any territory or place beyond the limits of British India, and
 (b) any officer of the Government of India or of any Local Government appointed by the Government of India or the Local Government to exercise all or any of the powers of a Political Agent for any place not forming part of British India under the law for the time being in force relating to foreign jurisdiction and extradition:

(41) "Presidency-town" shall mean the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be:

"Privy Council," (42) "Privy Council" shall mean the Lords and others for the time being of Her Majesty's Most Honourable Privy Council:

"Province," (43) "Province" shall mean the territories for the time being administered by any Local Government:

"Public nuisance," (44) "public nuisance" shall mean a public nuisance as defined in the Indian Penal Code:

XLV of 1860,

Leg. Changes:—[1] The words "United Provinces of Agra" were substituted for "North-Western Provinces" by U.P. Act VIII of 1902. [2] Added by Act I of 1903.

Case-law:—(a) Meaning of, 19 C.W.N. 425.

- [1] (44-a) "Punjab Act" shall mean an Act made by the Lieutenant-Governor of the Punjab in Council under the Indian Councils Acts, 1861 and 1892 [1], [2] or the Indian Councils Acts, 1861 to 1909 [2], [3] or the Government of India Act, 1915 [3]:
- 24 & 25 Vict., c. 67; 55 & 56 Vict., c. 14. "Punjab Act."
- (45) "registered," used with reference to a document, shall mean registered in British India under the law for the time being in force for the registration of documents:
- "Registered"
- (46) "Regulation" shall mean a Regulation made under the Government of India Act, 1870, [3] or the Government of India Act, 1915, [3].
- 38 Vict., c. 3. "Regulation."
- (47) "rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment:
- "Rule."
- (48) "schedule" shall mean a schedule to the Act or Regulation in which the word occurs:
- "Schedule."
- XIV of 1874. "Scheduled District" shall mean a "Scheduled District" as defined in the Scheduled Districts Act, 1874:
- "Scheduled District."
- (50) "section" shall mean a section of the Act or Regulation in which the word occurs:
- "Section."
- (51) "ship" shall include every description of vessel used in navigation not exclusively propelled by oars:
- "Ship."
- (52) "sign," with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark," with its grammatical variations and cognate expressions:
- "Sign"
- (53) "son" (a) in the case of any one whose personal law permits adoption, shall include an adopted son:
- "Son."
- (54) "sub-section" shall mean a sub-section of the section in which the word occurs:
- "Sub-section."
- (55) "swear," with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing:
- "Swear."
- 24 & 25 Vict., c. 67; 55 & 56 Vict., c. 14. [1] (55-a) "United Provinces Act" shall mean an Act made by the Lieutenant-Governor of the North-Western Provinces and Oudh (or of the United Provinces of Agra and Oudh) in Council under the Indian Councils Act, 1861, or the Indian Councils Acts, 1861 and 1892 [1], [2] or the Indian Councils Acts, 1861 to 1909 [2], [3] or the Government of India Act, 1915 [3]:
- "United Provinces Act."

Leg. Changes :—[1] Inserted by Act I of 1903. [2] Added by Act X of 1914. [3] Added by Act XXIV of 1917.

Case-law :—(a) Person appointed as heir by tenant is not male lineal descendant, 34 P.R. 1883.

"Vessel." (56) "vessel" shall include any ship or boat or any other description of vessel used in navigation :

"Will." (57) "will" shall include a codicil and every writing making a voluntary posthumous disposition of property :

"Writing." (58) expressions referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form : and

"Year." (59) "year" shall mean a year reckoned according to the British calendar.

4. (1) The definitions in section 3 of the following words and expressions, that is to say, "affidavit," "barrister," "British India," "District Judge," "father," "Government of India," "Her Majesty" or "the Queen," "High Court," "immoveable property," "imprisonment," "Local Government," "Magistrate," "month," "moveable property," "oath," "person," "section," "son," "swear," "will" and "year" apply also, unless there is anything repugnant in the subject or context, to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

(2) The definitions in the said section of the following words and expressions, that is to say, "abet," "chapter," "commencement," "financial year," "local authority," "master," "offence," "Part," "public nuisance," "registered," "schedule," "ship," "sign," "sub-section" and "writing" apply also, unless there is anything repugnant in the subject or context, to all Acts of the Governor General in Council and Regulations made on or after the fourteenth day of January, 1887.

General Rules of Construction.

5. (a) (1) Where any Act of the Governor General in Council is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent of the Governor General.

[1] (2) Where any Act of the Governor General in Council is reserved, under section 68 of the Government of India Act, 1915, for the signification of His Majesty's pleasure thereon, then, if no later date is expressed, it shall come into operation, if assented to by His Majesty, on the day on which that assent is duly notified.

(3) Unless the contrary is expressed, an Act of the Governor General in Council or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

6. Where this Act, or any Act of the Governor General in Council or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter

Leg. Changes:—[1] Substituted by Act XXIV of 1917.

Case-law:—(a) See 9 N.L.R. 49.

to be made, then, unless a different intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect ; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence (a) committed against any enactment so repealed ; or
- (e) affect (b) any investigation, legal proceeding (c) or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid ;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

7. (1) In any Act of the Governor General in Council or Regulation made after the commencement of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

Revival of repealed enactments.

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

8. Where this Act, or any Act of the Governor General in Council or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Construction of references to repealed enactments.

9. (1) In any Act of the Governor General in Council or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from," and, for the purpose of including the last in a series of days or any other period of time, to use the word "to."

Commencement and termination of time.

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Case-law:—(a) May be tried under Repealed Act if committed while it was in force, 7 M.H.C. Ap. 9. (b) Criminal trial to be conducted according to rules in force at the time of commencement, 6 M. 336. (c) Scope of the term, 16 C. 267 (F.B.) ; includes judicial and ministerial, 15 C. 357.

§. 15 **ACT X OF 1897 (GENERAL CLAUSES). General Clauses.**

10. (1) Where, by any Act of the Governor General in Council or Regulation made after the commencement of this Act, any Act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open :

Computation of time.

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1908, applies. **IX of 1908.**

(2) This section applies also to all Acts of the Governor General in Council and Regulations made on or after the fourteenth day of January, 1887.

11. In the measurement of any distance, for the purposes of any Act of the Governor General in Council or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

Measurement of distances.

12. Where, by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandize, then a like duty is leviable according to the same rate on any greater or less quantity.

Duty to be taken *pro rata* in enactments.

13. In all Acts of the Governor General in Council and Regulations, unless there is anything repugnant in the subject or context,—

Gender and number.

(1) words importing the masculine gender shall be taken to include females : and

(2) words in the singular shall include the plural, and *vice versa*.

Powers and Functionaries.

14. (1) Where, by any Act of the Governor General in Council or Regulation made after the commencement of this Act, any power is conferred on the Government, then that power may be exercised from time to time as occasion requires.

Powers conferred on the Government to be exercisable from time to time.

(2) This section applies also to all Acts of the Governor General in Council and Regulations made on or after the fourteenth day of January, 1887.

15. Where, by any Act of the Governor General in Council or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office.

Power to appoint to include power to appoint *ex officio*.

16. Where, by any Act, of the Governor General in Council or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power.

Power to appoint to include power to suspend or dismiss.

17. (1) In any Act of the Governor General in Council or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

Substitution of functionaries.

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

18. (1) In any Act of the Governor General in Council or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

Successors (a).

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

19. (1) In any Act of the Governor General in Council or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

Official chiefs and subordinates.

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Provisions as to Orders, Rules, etc., made under Enactments.

20. Where, by any Act of the Governor General in Council or Regulation, a power to issue any order, [1] notification, scheme, rule, form, or bye-law is conferred, then expressions used in the order, [1] notification, scheme, rule, form or bye-law, if it is made after the commencement of this Act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act or Regulation conferring the power.

Construction of orders, etc., issued under enactments.

Leg. Changes :—[1] Inserted by Act I of 1908.

Case-law :—(a) Transfer of *venue* from one Revenue Division to another by notification, 26 M.L.J. 189; 2 L.W. 255.

21. Where, by any Act of the Governor General in Council or Regulation, a power to^[1] issue notifications^[1], orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any^[2] notifications, orders, rules or bye-laws so^[1] issued.

Power to make, to include power to add to, amend, vary or rescind, orders, rules or bye-laws.

22. Where, by any Act of the Governor General in Council or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office or the appointment of any Judge or officer

Making of rules or bye-laws and issuing of orders between passing and commencement of enactment.

thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

23. Where, by any Act of the Governor General in Council or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:—

Provisions applicable to making of rules or bye-laws after previous publication.

- (1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;
- (2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Governor General in Council or the Local Government prescribes;
- (3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
- (4) the authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;
- (5) the publication in the Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

Leg. Changes :—[1] Substituted by Act I of 1908. [2] Inserted by Act I of 1908.

24. Where any Act of the Governor General in Council or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any [1] appointment, notification [1], order (a), scheme, rule, form or bye-law [1] made or [1] issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been [1] made or [1] issued under the provisions so re-enacted, unless and until it is superseded by any [1] appointment, notification [1], order, scheme, rule, form or bye-law [1] made or [1] issued under the provisions so re-enacted [2] and when any Act of the Governor General in Council or Regulation, which, by a notification under section 5 or 5-A of the Scheduled Districts Act, 1874, or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section. [2]

XIV of 1874.

Miscellaneous.

XLV of 1860.

25. Sections 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye-law unless the Act, Regulation, rule, or bye-law contains an express provision to the contrary.

26. Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice (b) for the same offence.

Provision as to offences punishable under two or more enactments.

27. Where any Act of the Governor General in Council or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Meaning of service by post (c).

28. (1) In any Act of the Governor General in Council or Regulation, and in any rule, bye-law, instrument or document, made under, or with reference to, any such Act or Regulation, any enactment may be cited by

Citation of enactments.

Leg. Changes:—[1] Inserted by Act I of 1903, S. 8. [2] Added by Act XIII of 1914.

Case-law:—(a) *E.g.*, notification of Local Government extending provisions of an Act, 7 C.W.N. 658. (b) 6 O.C. 153; 1 Pat. L.J. 373; but see 10 S.L.R. 162. (c) See 16 Bom. L.R. 204.

ACT XIII OF 1899 (GLANDERS AND FARCY). *Glanders & Farcy*

reference to the title or short title (if any) conferred thereon or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

(2) In this Act and in any Act of the Governor General in Council or Regulation made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

29. The provisions of this Act respecting the construction of Acts, Regulations, rules or bye-laws made after the commencement of this Act shall not affect the construction of any Act, Regulation, rule or bye-law made before the commencement of this Act, although the Act, Regulation, rule or bye-law is continued or amended by an Act, Regulation, rule or bye-law made after the commencement of this Act.

Saving for previous enactments, rules and bye-laws.

[1] 30. In this Act the expression 'Act of the Governor General in Council,' wherever it occurs, except in section 5, and the word 'Act' in clauses (9), (12), (38), (48) and (50) of section 3 and in section 25 shall be deemed to include an Ordinance made and promulgated by the Governor General under section 23 of the Indian Councils Act, 1861[1], [2] or section 72 of the Government of India Act, 1915.[2]

Application of Act to Ordinances.

24 & 25 Vict., c. 67.

THE SCHEDULE.

[ENACTMENTS REPEALED.]

Rep. by the Repealing and Amending Act, 1903 (I of 1903.)

THE GLANDERS AND FARCY ACT, 1899.

(ACT XIII OF 1899.)

[Passed on the 20th March, 1899.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1879	XX	Glanders and Farcy ...	Rep., Act XIII of 1899.
1886	XXIV	Do. (Extending). ...	Rep., Act XII of 1891.
1891	XII	Amending Act ...	Rep. (as to Act XX of 1879), Act XIII of 1899.
1896	XV	Glanders and Farcy Amend- ment Act. ...	Rep., Act XIII of 1899.
1897	XIV	Indian Short Titles Act ...	Rep. (as to Act XV of 1896), Act XIII of 1899.
1899	XIII	Glanders and Farcy ...	Am., Act XI of 1901. Am., Act XII of 1910 Rep. in pt., Act X of 1914.

Leg. Changes :—[1] Added by Act XVII of 1914. [2] Added by Act XXIV of 1917.

Glanders & Farcy Act XIII OF 1899 (GLANDERS AND FARCY). S. 1

An Act to consolidate and amend the Law relating to Glanders and Farcy.

WHEREAS it is expedient to consolidate and amend the law relating to glanders and farcy; It is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called the Glanders and Farcy Act, 1899.

(2) It extends to the whole of British India; [1] *

[1] (3) * * * *

2. (1) In this Act, unless there is anything repugnant in the subject or context, "diseased" means affected with glanders or farcy or any other dangerous epidemic disease among horses which the Governor General in Council may, by notification in the Gazette of India, specify in this behalf [2] either generally or in respect of any local area [2].

(2) The provisions of this Act relating to horses shall apply also to asses and mules.

3. The Local Government may, by notification in the local official Gazette, apply this Act, or any provision of this Act, [3] so far as all or any of the diseases mentioned in, or specified in a notification under section 2, sub-section (1), are concerned, [3] to any local area, to be specified in such notification, within the province.

4. (1) When this Act has been so applied to a local area, the Local Government may, by notification in the local official Gazette, appoint such persons as it thinks fit to be Inspectors under this Act and to exercise and perform, within the whole of the local area or such portions thereof as it may prescribe, the powers conferred and the duties imposed by this Act on such officers.

(2) Every person so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code.

5. Within the local limits for which he is so appointed, any such Inspector as aforesaid may, subject to such rules as the Local Government may make in this behalf, enter and search any field, building or other place for the purpose of ascertaining whether there is therein any horse which is diseased.

6. Within such limits as aforesaid, the Inspector may seize any horse which he has reason to believe to be diseased.

7. (1) On any such seizure as aforesaid, the Inspector shall cause the horse seized to be examined as soon as possible by such Veterinary Practitioner as the Local Government may appoint in this behalf:

Leg. Changes:—[1] The expression "and (3) It shall come into force at once" was repealed by Act X of 1914. [2] Added by Act XI of 1901. [3] Added by Act XII. of 1910.

S. 12 ACT XIII OF 1899 (GLANDERS AND FARCY). **Glanders & Farcy**

Provided that, when the Inspector is also a Veterinary Practitioner so appointed, he may make the examination himself.

(2) For the purposes of the examination, the Veterinary Practitioner may submit the horse to any test or tests which the Local Government may prescribe.

Horse to be destroyed if found diseased : otherwise restored.

8. (1) If the Veterinary Practitioner certifies in writing that the horse is diseased, the Inspector shall cause the same to be immediately destroyed :

Provided that, in the case of any disease other than glanders or farcy, horses certified to be diseased as aforesaid may, subject to any rules which the Local Government may make in this behalf, be either destroyed or otherwise treated or dealt with as the Veterinary Practitioner may deem necessary.

(2) If, after completing the examination, the Veterinary Practitioner does not certify that the horse is diseased, the Inspector shall at once deliver the same to the person entitled to the possession thereof.

9. (1) When any diseased horse has been in any building, shed or other enclosed place, or in any open lines, the Inspector may issue a notice to the owner of the building,

When horse diseased, place where it has been to be disinfected, etc.

shed, place or lines, or to the person in charge thereof, directing him to have the same disinfected and the internal fittings thereof, or such other things found

therein or near thereto as the Local Government may by rule prescribe, destroyed.

(2) On the failure or neglect of such owner or other person as aforesaid to comply with the notice within a reasonable time, the Inspector shall cause the building, shed, place or lines to be disinfected and the fittings or other things to be destroyed, and the expense (if any) thereby incurred may be recovered from the owner or other person as if it were a fine.

Owner or person in charge of diseased horse to give notice.

10. The owner or any person in charge of a diseased horse shall give immediate information of the horse being diseased to the Inspector or to such authority as the Local Government may appoint in this behalf.

Prohibition against removal, without license, of horse which has been with diseased horse.

11. No person in charge of any horse which has been in the same field, building or place as, or in contact with, a diseased horse, shall remove such horse except in good faith for the purpose of preventing infection, or under a license to be granted by the Inspector and subject to the conditions of the license.

12. (1) Whoever, being an Inspector appointed under this Act, vexatiously and unnecessarily enters or searches any field, building or other place, or seizes or detains any horse on the pretence that it is diseased, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Vexatious entries, searches and seizures.

Glanders & Farcy ACT XIII OF 1899 (GLANDERS AND FARCY). S. 13

(2) No prosecution under this section shall be instituted after the expiry of three months from the date on which the offence has been committed.

Penalty for refusing to comply with notice under section 9, or for moving horse contrary to section 11.

13. Whoever refuses or neglects to comply with any notice issued by the Inspector under section 9, or removes any horse in contravention of section 11, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Power to make rules.

14. (1) The Local Government may make rules to carry out the purposes and objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules as aforesaid may—

- (a) regulate entries, searches and seizures by Inspectors under this Act;
- (b) regulate the use of tests and the isolation of horses subjected thereto, and provide for recovering the expense of detaining, isolating and testing horses from the owners or persons in charge thereof as if it were a fine;
- (c) regulate the destruction or treatment, as the case may be, of horses certified under section 8 to be diseased, and the disposal of the carcasses of diseased horses;
- (d) regulate the disinfecting of buildings and places in which diseased horses have been, and prescribe what things found therein or near thereto shall be destroyed; and
- (e) regulate the grant of licenses under section 11 and the conditions on which those licenses shall be granted.

(3) All rules under this section shall be published in the local official Gazette, and, on such publication, shall have effect as if enacted by this Act.

(4) In making any rule under this section, the Local Government may direct that a breach of it shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Appointment of same person to be both Inspector and Veterinary Practitioner.

15. Any Veterinary Practitioner may be appointed by the Local Government to be both Inspector and Veterinary Practitioner for all or any of the purposes of this Act or of any rule thereunder.

Protection to persons acting under Act.

16. No suit, prosecution or other legal proceeding shall lie against any person for anything which is, in good faith, done or intended to be done under this Act.

17. [1]

* * *

SCHEDULE.

[2] * * *

Leg. Changes:—[1] Repealed by Act X of 1914. [2] Schedule repealed by Act X of 1914.

THE GOVERNMENT OF INDIA ACT, 1915.

(5 AND 6 GEO. V, c. 61).

[Passed on the 29th July, 1915.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1861	24 & 25 Vict., c. 104	Indian High Courts ...	Rep., 5 & 6 Geo. V, c. 61.
1865	28 & 29 Vict., c. 15	Do. ...	Do.
1911	1 & 2 Geo. V, c. 18	Do. ...	Do.
1915	5 & 6 Geo. V, c. 61	Government of India.	

An Act to consolidate enactments relating to the Government of India.

PART IX.

THE INDIAN HIGH COURTS.

* * * *

Jurisdiction.

106. (1) The several high courts are courts of record and have such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as are vested in them by letters patent, and, subject to the provisions of any such letters patent, all such jurisdiction, powers and authority as are vested in those courts respectively at the commencement of this Act.

(2) The high courts have not and may not exercise any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

107. (a) Each of the high courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,—

(a) call for returns,

(b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;

Case law :—(a) This section cannot be invoked so as to question proceedings which purport to be proceedings lawfully taken by a Magistrate under Ch. XII of the Crim. Pro. Code, 16 A.L.J. 189.

- (c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts ;
- (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts ; and
- (e) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts :

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any Act for the time being in force, and shall require the previous approval, in the case of the High Court at Calcutta, of the Governor General in Council, and in other cases of the Local Government.

108. (1) Each high court may by its own rules provide as it thinks fit for the exercise, by one or more judges, or by division courts constituted by two or more judges, of the high court, of the original and appellate jurisdiction vested in the court.

Exercise of jurisdiction by single judges or division courts.

(2) The chief justice of each high court shall determine what judge in each case is to sit alone, and what judges of the court, whether with or without the chief justice, are to constitute the several division courts.

109. (1) The Governor General in Council may, by order, transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the high courts, and authorise any high court to exercise all or any portion of its jurisdiction in any part of British India not included within the limits for which the high court was established, and also to exercise any such jurisdiction in respect of Christian subjects of His Majesty resident in any part of India outside British India.

Power for Governor General in Council to alter local limits of jurisdiction of high courts.

(2) The Governor General in Council shall transmit to the Secretary of State an authentic copy of every order made under this section.

(3) His Majesty may signify, through the Secretary of State in Council, his disallowance of any such order, and such disallowance shall make void and annul the order as from the day on which the Governor General notifies that he has received intimation of the disallowance, but no act done by any high court before such notification shall be deemed invalid by reason only of such disallowance.

Exemption from jurisdiction of high court.

110. (1) The governor-general, each governor, and each of the members of their respective executive councils, shall not—

- (a) be subject to the original jurisdiction of any high court by reason of anything counselled, ordered or done by any of them in his public capacity only ; nor
- (b) be liable to be arrested or imprisoned in any suit or proceeding in any high court acting in the exercise of its original jurisdiction ; nor
- (c) be subject to the original criminal jurisdiction of any high court in respect of any offence not being treason or felony.

(2) The exemption under this section from liability to arrest and imprisonment shall extend also to the chief justices and other judges of the several high courts.

111. The order in writing of the Governor General in Council for any act shall, in any proceeding, civil or criminal, in any high court acting in the exercise of its original jurisdiction, be a full justification of the act, except so far as the order extends to any European British subject ; but nothing in this section shall exempt the governor general, or any member of his executive council, or any person acting under their orders, from any proceedings in respect of any such act before any competent Court in England.

Written order by governor general justification for act in any court in India.

Law to be administered.

112. The high courts at Calcutta, Madras and Bombay, in the exercise of their original jurisdiction in suits against inhabitants of Calcutta, Madras or Bombay, as the case may be, shall, in matters of inheritance and succession to lands, rents and goods, and in matters of contract and dealing between party and party, when both parties are subject to the same personal law or custom having the force of law, decide according to that personal law or custom, and when the parties are subject to different personal laws or customs having the force of law, decide according to the law or custom to which the defendant is subject.

Law to be administered in cases of inheritance and succession.

Additional High Courts.

113. His Majesty may, if he sees fit, by letters patent, establish a high court of judicature in any territory in British India, whether or not included within the limits of the local jurisdiction of another high court, and confer on any high court so established any such jurisdiction, powers and authority as are vested in or may be conferred on any high court existing at the commencement of this Act ; and, where a high court is so established in any area included within the limits of the local jurisdiction of another high court, His Majesty may, by letters patent, alter those limits, and make such incidental, consequential and supplemental provisions as may appear to be necessary by reason of the alteration.

Power to establish additional high courts.

Advocate-General.

114. (1) His Majesty may, by warrant under His Royal Sign Manual, appoint an advocate-general for each of the presidencies of Bengal, Madras and Bombay.

Appointment and powers of advocate-general.

(2) The advocate-general for each of those presidencies may take on behalf of His Majesty such proceedings as may be taken by His Majesty's Attorney-General in England.

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PART XI.

OFFENCES, PROCEDURE AND PENALTIES.

124. If any person holding office under the Crown in India does any of the following things, that is to say,—

Certain acts to be misdemeanours.

Oppression.

(1) if he oppresses any British subject within his jurisdiction or in the exercise of his authority ; or

Willful disobedience. (2) if except in case of necessity, (the burden of proving which shall be on him) he wilfully disobeys, or wilfully omits, forbears or neglects to execute, any orders or instructions of the Secretary of State ; or

Breach of duty.

(3) if he is guilty of any wilful breach of the trust and duty of his office ; or

Trading.

(4) if, being the Governor General, or a Governor, or Lieutenant-Governor, or Chief Commissioner, or a member of the Executive Council of the Governor General or of a Governor, or Lieutenant-Governor, or being a person employed or concerned in the collection of revenue or the administration of justice, he is concerned in, or has any dealings or transactions by way of, trade or business in any part of India, for the benefit either of himself or of any other person otherwise than as a share-holder in any joint stock company or trading corporation ; or

Receiving presents. (5) if he demands, accepts or receives, by himself or another, in the discharge of his office, any gift, gratuity or reward, pecuniary or otherwise, or any promise of the same, except in accordance with such rules as may be made by the Secretary of State as to the receipt of presents, and except the case of fees paid or payable to harristers, physicians, surgeons and chaplains in the way of their respective professions,

he shall be guilty of a misdemeanour ; and if he is convicted of having demanded, accepted or received any such gift, gratuity or reward, the same, or the full value thereof, shall be forfeited to the Crown, and the court may order that the gift, gratuity or reward, or any part thereof, be restored to the person who gave it, or be given to the prosecutor or informer, and that the whole or any part of any fine imposed on the offender be paid or given to the prosecutor or informer, as the court may direct.

125. (1) If any European British subject, without the previous consent in writing of the Secretary of State in Council or of the Governor General in Council or of a Local Government, by himself or another,

Loans to princes or chiefs.

(a) lends any money or other valuable thing to any prince or chief in India ; or

(b) is concerned in lending money to, or raising or procuring money for, any such prince or chief, or becomes security for the repayment of any such money ; or

- (c) lends any money or other valuable thing to any other person for the purpose of being lent to any such prince or chief ; or
- (d) takes, holds, or is concerned in any bond, note or other security granted by any such prince or chief for the repayment of any loan or money hereinbefore referred to,

he shall be guilty of a misdemeanour.

(2) Every bond, note, or security for money, of what kind or nature soever, taken, held or enjoyed, either directly or indirectly, for the use and benefit of any European British subject, contrary to the intent of this section, shall be void.

126. (1) If any person carries on, mediately or immediately, any illicit correspondence, dangerous to the peace or safety of any part of British India, with any prince, chief, landholder or other person having authority in India, or with the Commander, Governor, or President of any foreign European settlement in India, or any correspondence, contrary to the rules and orders of the Secretary of State or of the Governor General in Council or a Governor in Council, he shall be guilty of a misdemeanour; and the Governor General or Governor may issue a warrant for securing and detaining in custody any person suspected of carrying on any such correspondence.

(2) If, on examination taken on oath in writing of any credible witness before the Governor General in Council or the Governor in Council, there appear reasonable grounds for the charge, the Governor General or Governor may commit the person suspected or accused to safe custody, and shall within a reasonable time, not exceeding five days, cause to be delivered to him a copy of the charge on which he is committed.

(3) The person charged may deliver his defence in writing, with a list of such witnesses as he may desire to be examined in support thereof.

(4) The witnesses in support of the charge and of the defence shall be examined and cross-examined on oath in the presence of the person charged, and their depositions and examination shall be taken down in writing.

(5) If, notwithstanding the defence, there appear to the Governor General in Council or Governor in Council reasonable grounds for the charge and for continuing the confinement, the person charged shall remain in custody until he is brought to trial in India or sent to England for trial.

(6) All such examinations and proceedings, or attested copies thereof under the seal of the high court, shall be sent to the Secretary of State as soon as may be, in order to their being produced in evidence on the trial of the person charged in the event of his being sent for the trial to England.

(7) If any such person is to be sent to England, the Governor General or Governor, as the case may be, shall cause him to be so sent at the first convenient opportunity, unless he is disabled by illness from undertaking the voyage, in which case he shall be so sent as soon as his state of health will safely admit thereof.

(8) The examinations and proceedings transmitted in pursuance of this section shall be received as evidence in all Courts of law, subject to any just exceptions as to the competency of the witnesses.

127. (1) If any person holding office under the Crown in India commits any offence under this Act, or any offence against any person within his jurisdiction or subject to his authority, the offence may, without prejudice to any other jurisdiction, be inquired of, heard, tried and determined before His Majesty's High Court of Justice, and be dealt with as if committed in the county of Middlesex.

(2) Every British subject shall be amenable to all courts of justice in the United Kingdom, of competent jurisdiction to try offences committed in India, for any offence committed within India and outside British India, as if the offence had been committed within British India.

128. Every prosecution before a high court in British India in respect of any offence referred to in the last foregoing section must be commenced within six years after the commission of the offence.

129. If any person commits any offence referred to in this Act he shall be liable to such fine or imprisonment or both as the Court thinks fit, and shall be liable, at the discretion of the Court, to be adjudged to be incapable of serving the Crown in India in any office, civil or military; and, if he is convicted in British India by a High Court, the Court may order that he be sent to Great Britain.

THE HACKNEY CARRIAGE ACT, 1879.

(ACT XIV OF 1879.)

[Passed on the 5th September, 1879.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1879	XIV	Hackney Carriage	Am., Act IV of 1914, .. Act XVII of 1914.

An Act for the regulation and control of Hackney-carriages in certain Municipalities and Cantonments.

WHEREAS it is expedient to provide for the regulation and control of hackney-carriages in certain municipalities and cantonments; It is hereby enacted as follows:—

Preamble.

Short title. 1. This Act may be called the Hackney Carriage Act, 1879:

Commencement. [1] * * * *

Leg. Changes:—[1] The words "and it shall come into force at once; but" were repealed by Act XVII of 1914.

S. 5 **ACT XIV OF 1879 (HACKNEY CARRIAGE). Hackney Car.**

nothing herein contained shall affect any power conferred by any law relating to municipalities, or any rule made in exercise of any such power.

Saving.
Interpretation-
clause.

2. In this Act—

“hackney-carriage” means any wheeled vehicle drawn by animals and used for the conveyance of passengers, which is kept, or offered, or plies, for hire ^(a); and

“committee” means a municipal committee, or a body of municipal commissioners, constituted under the provisions of any enactment for the time being in force.

3. The Lieutenant-Governors of the United Provinces of Agra and Oudh, the Punjab and Burma, and the Chief Commissioners of the Central Provinces, Assam, Ajmere and Coorg, may, by notification in the official Gazette, apply this Act to any municipality in the territories administered by them respectively.

Application of Act to municipalities.
When this Act has been so applied to any municipality, the committee of such municipality may from time to time make rules for the regulation and control of hackney-carriages within the limits of such municipality, in the manner in which, under the law for the time being in force, it makes rules or bye-laws for the regulation and control of other matters within such limits.

Power of committees to make rules.
Every rule made under this section shall, when confirmed by the **[1] Commissioner** and published for such time and in such manner as the **[1] Commissioner** may from time to time prescribe, have the force of law:

Confirmation and publication of rules.
Power of [1] Commissioner to rescind rules.
Provided that the **[1] Commissioner** may at any time rescind any such rule.

4. The Local Government of any of the said territories may from time to time, [2] * * * make rules for the regulation and control of hackney-carriages in any military cantonment situated in the territory administered by it.

Power to make rules for cantonments.
All rules made under this section, when published for such time and in such manner as the authority making the same may from time to time prescribe, shall have the force of law.

5. The authority making any rules under this Act may extend their operation to any railway-station, or specified part of a road, not more than six miles from the local limits of the municipality or cantonment concerned:

Power to extend operation of rules beyond limits of municipality or cantonment.
Provided that such extension shall be made, in the case of a municipality, with the sanction of the **[1] Commissioner**, and, in the

Leg. Changes:—**[1]** “Commissioner” was substituted for “Local Government” by Act IV of 1914. **[2]** The expression “subject to the control of the Governor General in Council” was omitted by Act IV of 1914.

Case-law:—**(a)** Effect of mere advertisement for hire, 4 L.B.R. 80=7 Cr. L.J. 71.

case of a cantonment situate in British India, subject to the control of the Governor General in Council.

When any rules have been made under this Act for any municipality, the Local Government may, subject to the control of the Governor General in Council, extend the operation of such rules to any cantonment the boundary of which is not more than six miles distant from the boundary of such municipality.

What rules under sections 3 and 4 may provide for.

6. The rules to be made under section 3 or section 4 may, among other matters,—

- (a) direct that no hackney-carriage (a), or no hackney-carriage of a particular description, shall be let to hire, or taken to ply, or offered for hire, except under a license granted in that behalf;
- (b) direct that no person shall act as driver of a hackney-carriage except under a license granted in that behalf;
- (c) provide for the issue of the licenses referred to in clauses (a) and (b), prescribe the conditions (if any) on which such licenses shall be granted, and fix the fees (if any) to be paid therefor;
- (d) regulate the description of animals, harness and other things to be used with licensed carriages, and the condition in which such carriages, and the animals, harness and other things used therewith shall be kept, and the lights (if any) to be carried after sunset and before sunrise;
- (e) provide for the inspection of the premises on which any such carriages, animals, harness and other things are kept;
- (f) fix the time for which such licenses shall continue in force, and the events (if any) upon which within such time they shall be subject to revocation or suspension;
- (g) provide for the numbering of such carriages;
- (h) determine the times at which, and the circumstances under which, any person keeping a hackney-carriage shall be bound to let or refuse to let such carriage to any person requiring the same;
- (i) appoint places as stands for hackney-carriages and prohibit such carriages waiting for hire except at such places;
- (j) limit the rates or fares, as well for time as distance, which may be demanded for the hire of any hackney-carriage; and prescribe the minimum speed at which such carriages when hired by time shall be driven;
- (k) limit the number of persons, and the weight of property, which may be conveyed by any such carriage;
- (l) require the owner or person in charge of any such carriage to keep a printed list of fares in English and such other language as may be prescribed affixed inside such carriage in such place as may be determined by the rules, and prohibit the destruction or defacement of such list;

Case-law :—(a) Driving unlicensed carriage when no offence, 7 P.R. 1892, Cr.; refusal to ply for hire when no offence, 24 Ind. Cas. 960=15 Cr. L.J. 552.

S. 10 ACT XIV OF 1879 (HACKNEY CARRIAGE). Hackney Car.

- (m) require drivers to wear a numbered badge or ticket, and to produce their licenses when required by a Magistrate or other person authorized by the rules in this behalf, and prohibit the transfer or lending of such licenses and badges; and
- (n) provide for the deposit of property found in such carriages, and the payment of a fee by the owner of such property on the delivery thereof to him.

Penalty for breach of rules. 7. Any person breaking any rule (a) made under this Act shall be punished with fine which may extend to fifty rupees.

8. The amount of any fees received and the amount of any expenses incurred in giving effect to this Act shall in any Disposal of fees and payment of expenses. municipality be credited and debited, respectively, to the municipal fund, and, in any cantonment where there is a cantonment-fund, to such fund.

9. (b) If any dispute arises between the hirer of any hackney-carriage and the owner or driver of such carriage as to the amount of the fare payable by such hirer under any rule made under this Act, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined by any Magistrate or Bench of Magistrates within the local limits of whose jurisdiction such dispute has arisen; and such Magistrate or Bench may, besides determining the amount so in dispute, direct that either party shall pay to the other such sum as compensation for loss of time as such Magistrate or Bench thinks fit.

Power of Magistrate to decide disputes regarding fares.

Any sum determined to be due or directed to be paid under this section shall be recoverable as if it were a fine.

The decision of any Magistrate or Bench in any case under this section shall be final.

When any such case is heard by a Bench, any difference of opinion arising between the members of such Bench shall be settled in the same manner as differences of opinion arising between such members in the trial of criminal cases.

10. If, at the time any dispute mentioned in section 9 arises, any Magistrate or Bench of Magistrates having jurisdiction in respect of such dispute is sitting within the local limits to which the rules apply, the hirer of the carriage may require the driver thereof to take him in the same to the Court of such Magistrate or Bench for the purpose of making an application under that section.

In case of dispute hirer may require driver to take him to Court.

Any driver neglecting or refusing to comply with such requisition shall be punished with imprisonment for a term which may extend to one month, or with fine not exceeding fifty rupees, or with both.

Case-law :—(a) As to effect of breaking a condition of license, see U.B.R. (1892—1896) Vol. I, p. 125. (b) Provides merely a summary and not exclusive remedy. A.W.N. (1893) 203.

THE INDIAN INCOME TAX ACT, 1918.

(ACT VII OF 1918.)

[Passed on the 19th March, 1918.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1860	XXXII	Income-tax	Rep., Act VIII of 1868.
1861	XXI	Do.	" " " "
1862	IX	Do.	" " VII of 1868.
1862	XVI	Do.	" " VIII of 1868.
1863	XXVII	Do.	" " " "
1869	IX	Do.	" " XVI of 1870.
1869	XXIII	Do.	" " " "
1870	XVI	Do.	" " XII of 1871.
1871	XII	Do.	" " XVI of 1874.
1872	VIII	Do.	" " " "
1886	II	Do.	" " VII of 1918.
1903	XI	Income-tax (Amending)	" " " "
1916	V	Do.	" " " "
1917	VII	Do.	" " " "
1918	VII	Income-tax	Am., Act IV of 1919.

An Act to consolidate and amend the law relating to Income-tax.

WHEREAS it is expedient to consolidate and amend the law relating to income-tax; It is hereby enacted as follows:—

Short title, extent
and commence-
ment.

1. (1) This Act may be called the Indian Income-tax Act, 1918.

(2) It extends to the whole of British India, including the Sonthal Parganas, and applies also, within the dominions of Princes and Chiefs in India in alliance with His Majesty, to British subjects in those dominions who are in the service of the Government of India or of a local authority established in the exercise of the powers of the Governor General in Council in that behalf, and to all other servants of His Majesty in those dominions; and

(3) It shall come into force on the first day of April, 1918.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "Agricultural income" means—

(a) Any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue or subject to a local rate assessed and collected by officers of Government as such;

(b) Any income derived from—

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

- (iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce, or
- (iv) any building owned and occupied by the receiver of the rent or revenue of any such land as is referred to in clause (a), or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in sub-clauses (ii) and (iii) is carried on :

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue, or the cultivator or the receiver of the rent-in-kind, by reason of his connection of the land, requires as a dwelling-house, or as a store-house, or other out-building ;

(2) "Assessee" means a person by whom income-tax is payable, and includes a firm and a Hindu undivided family ;

(3) "Business" includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture ;

(4) "Chief Revenue-authority" means the Board of Revenue or the Financial Commissioner in Provinces where those authorities exist, and in any other case such authority as the Local Government may declare to be the Chief Revenue-authority for the purposes of this Act .

(5) "Collector" includes any officer whom the Local Government may appoint to exercise or perform all or any of the powers or duties conferred by this Act on a Collector, and means in relation to any assessee carrying on business, the Collector of the place where the principal place of business of such assessee is situate, and in relation to any other assessee the Collector of the place where such assessee resides ;

(6) "Commissioner" includes any officer whom the Local Government may appoint to exercise or perform all or any of the powers or duties conferred by this Act on a Commissioner ;

(7) "Company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the legislature of a British possession, and includes any foreign association carrying on business in British India whether incorporated or not, and whether its principal place of business is situate in British India or not, which the Governor General in Council may, by general or special order, declare to be a company for the purposes of this Act ;

(8) "Local authority" includes any person legally entitled to the control or management of any municipal or local fund ;

(9) "Magistrate" means a Presidency Magistrate or a Magistrate of the first class, or a Magistrate of the second class specially empowered by the Local Government to try offences against this Act ;

(10) "Prescribed" means prescribed by rules made under this Act ;

(11) "Previous year" means the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day on which his accounts have so been made up :

Provided that, if this option has once been exercised by the assessee, it shall not again be exercised so as to vary the meaning of the expression "previous year" as then applicable to such assessee, except with the consent of the Collector and upon such conditions as he may think fit ;

(12) "Principal officer" used with reference to a local authority or a company or any other public body or association not being a local authority or company, means—

- (a) the secretary, treasurer, manager or agent of the authority, company, body or association, or
- (b) any person connected with the authority, company, body or association upon whom the Collector has served a notice of his intention of treating him as the principal officer thereof ; and

(13) "Total income" means total income from all sources to which this Act applies.

CHAPTER I.

TAXABLE INCOME.

3. (1) Save as hereinafter provided, this Act shall apply to all income from whatever source it is derived, if it accrues or arises or is received in British India, or is, under the provisions of this Act, deemed to accrue or arise or to be received in British India.

(2) This Act shall not apply to the following classes of income :—

- (i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto.
- (ii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.
- (iii) The income of local authorities.
- (iv) Interest on securities which are held by, or are the property of, any Provident Fund to which the Provident Funds Act, 1897, applies, or any Provident Insurance Society to which the Provident Insurance Societies Act, 1912, is, or, but for an exemption under that Act, would be, applicable.
- (v) Any capital sum received in commutation of the whole or a portion of a pension, or in the nature of consolidated compensation for death or injuries, or in payment of any insurance policy, or as the accumulated balance at the credit of a subscriber to any such Provident Fund.

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- (vi) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit.
- (vii) Legacies.
- (viii) Any receipts not being receipts arising from business or the exercise of a profession, vocation, or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employee.
- (ix) Any perquisite or benefit which is neither money nor reasonably capable of being converted into money.

In this sub-section "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

Agricultural income. 4. Agricultural income shall not be chargeable to income-tax.

Classes of income chargeable to income-tax. 5. Save as otherwise provided by this Act, the following classes of income shall be chargeable to income-tax in the manner hereinafter appearing, namely—

- (i) Salaries.
- (ii) Interest on securities.
- (iii) Income derived from house property.
- (iv) Income derived from business.
- (v) Professional earnings.
- (vi) Income derived from other sources.

6. (1) The tax shall be payable by an assessee under the head "Salaries" in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits received by him in lieu of, or in addition to, any salary or wages, which are paid by or on behalf of Government, a local authority, a company, or any other public body or association not being a local authority or company, or by or on behalf of any private employer where such employer has entered into an agreement with the Collector in accordance with the prescribed conditions to recover the tax on behalf of Government, provided that the tax shall not be payable in respect of—

- (i) any salary not exceeding five hundred rupees per mensem received by any member of His Majesty's Forces, or of His Majesty's Indian Forces, as the pay of an appointment which is ordinarily reserved exclusively for members of those Forces, or
- (ii) any sum deducted under the authority of Government from the salary of any individual for the purpose of securing to him a deferred annuity or of making provision for his wife or children, provided that the sum so deducted shall not exceed one-sixth of the salary.

Case-law :—(a) Meaning of—, 27 C. 674.

(2) Any income which would be chargeable under this head if paid in British India shall be deemed to be so chargeable if paid to a British subject or any servant of His Majesty in any part of India by Government or by a local authority established by the Governor General in Council.

7. The tax shall be payable by an assessee under the head "Interest on securities" in respect of the interest receivable by him on any security of the Government of India, or on debentures or other securities for money issued by or on behalf of a local authority or a company :

Provided that no tax shall be payable on the interest receivable on any security of the Government of India issued or declared to be income-tax free.

8. The tax shall be payable by an assessee under the head "Income derived from house property" in respect of the *bona fide* annual value of any house property of which he is the owner, subject to the following allowances, namely :—

- (i) where the property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs, a sum equal to one-sixth of such value ;
- (ii) where the property is in the occupation of a tenant who has undertaken to bear the cost of repairs, the difference between such value and the rent paid by the tenant up to but not exceeding one-sixth of such value ;
- (iii) the amount of any annual premium paid to insure the property against risk of damage or destruction ;
- (iv) where the property is subject to a mortgage or charge or to a ground rent, the amount of any interest on such mortgage or charge or of any such ground rent ;
- (v) any sums paid on account of land revenue in respect of the property ;
- (vi) in respect of collection charges, a sum not exceeding the prescribed maximum ;
- (vii) in respect of vacancies, such sum as the Collector may determine having regard to the circumstances of the case.

For the purposes of this section and section 9, the expression "annual value" shall be deemed to mean the sum for which the property might reasonably be expected to let from year to year :

Provided that, where house property is in the occupation of the owner, such sum shall, for the purposes of this section, be deemed not to exceed ten per cent of the aggregate income of the owner.

9. (1) The tax shall be payable by an assessee under the head "Income derived from business" in respect of the profits of any business carried on by him.

(2) Such profits shall be computed after making the following allowances, in respect of sums paid, or, in the case of depreciation, debited, namely :—

- (i) any rent paid for the premises in which such business is carried on, or where the premises are owned by the assessee the *bona fide* annual value thereof, provided that when any substantial part of the premises is used as a dwelling-house by the assessee, the allowance under this clause shall be such sum as the Collector may determine having regard to the proportional part so used ;
- (ii) in respect of repairs, where the assessee is the tenant only of the premises, and has undertaken to bear the cost of such repairs, the amount actually expended thereon, provided that if any substantial part of the premises is used by the assessee as a dwelling-house, a proportional part only of such amount shall be allowed ;
- (iii) in respect of capital borrowed for the purposes of the business, where the payment of interest thereon is not in any way dependent on the earning of profits, the amount of the interest paid ;
- (iv) in respect of insurance against risk of damage or destruction of buildings, machinery or plant, used for the purposes of the business, the amount of any premium paid ;
- (v) in respect of current repairs to buildings, machinery or plant, the amount actually expended thereon ,
- (vi) in respect of depreciation of such buildings, machinery or plant being the property of the assessee, a sum not exceeding a percentage on the original cost thereof to the assessee to be fixed, subject to the approval of the Governor General in Council, by the Local Government for different classes of buildings, machinery or plant having regard to the estimated life thereof, in determining which it shall be assumed that current repairs are executed from time to time :

Provided that—

- (a) no such allowance shall be made unless the amount claimed has actually been debited in the ordinary accounts of the business for the previous year, and the prescribed particulars have been duly furnished ;
- (b) when in any year the full allowance admissible has not been claimed, the balance may be added to the allowance made for the following year or years ;
- (c) the aggregate of the allowances made under this sub-head either under this Act or any Act repealed thereby shall, in no case, exceed the original cost to the assessee of the buildings, machinery or plant, as the case may be ;
- (vi) in respect of any machinery or plant which has been sold or discarded as obsolete, the difference between the original cost to the assessee of the machinery or plant as reduced by the aggregate of the allowances made in respect of

- depreciation under clause (vi), and the amount for which the machinery or plant is actually sold, or its scrap value ;
- (viii) any sums paid on account of land-revenue, local rates or municipal taxes in respect of the premises ;
- (ix) in respect of any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits.

Professional earnings. 10. (1) The tax shall be payable by an assessee under the head "Professional earnings" in respect of the profits of any profession, or vocation, followed by him.

(2) Such profits shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purposes of such profession or vocation, provided that no allowance shall be made on account of any personal expenses of the assessee.

(3) Professional fees paid in any part of India to a person ordinarily resident in British India shall be deemed to be income chargeable under this head.

Income derived from other sources. 11. (1) The tax shall be payable by an assessee under the head "Income derived from other sources" (a) in respect of income and profits of every kind and from every source to which this Act applies (if not included under any of the preceding heads) with the exception of agricultural income.

(2) Such income and profits shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making such income or earning such profits, provided that no allowance shall be made on account of any personal expenses of the assessee.

Exclusions of a general nature. 12. (1) In computing the amount of the income chargeable to income-tax in the case of an assessee under any of the foregoing heads, no account shall be taken of any income which the assessee enjoys as a member of a company or of a firm or of an undivided Hindu family where the company, the firm or the family is liable to the tax.

(2) There shall also be excluded from the computation any sum paid by the assessee to effect an insurance on his own life, or on the life of his wife, or in respect of a contract for a deferred annuity on his own life or on the life of his wife or as a contribution to any provident fund to which the Provident Funds Act, 1897, applies, or to any provident fund which complies with the provisions of the Provident Insurance Societies Act, 1912, or has been exempted from the provisions of that Act :

IX of 1897.

V of 1912.

Provided that the aggregate of any sums so excluded shall not, after taking into account any exemptions allowed in respect of like provision under the head "Salaries," exceed one-sixth of the income of the assessee which would, apart from such exclusion and exemption, be chargeable to income-tax.

Case-law :—(a) Includes mine royalty, 34 C. 257.

Treatment of exemptions and exclusions in determining total income.

13. In computing the total income of an assessee for the purposes of Schedule I, salaries and deductions exempted under the proviso to section 6 (1), income mentioned in section 12 (1), and sums excluded under section 12 (2) shall be taken into account.

Taxable income and levy of tax thereon.

14. (1) The aggregate amount of an assessee's income chargeable under each of the heads mentioned in sections 6 to 11 shall be the taxable income of the assessee.

(2) Subject to the conditions hereinbefore set out, there shall be levied in respect of the year beginning with the first day of April 1918, and in respect of each subsequent year, by collection in that year and subsequent adjustment as hereinafter provided income-tax upon every assessee in respect of his taxable income in that year at the rate specified in Schedule I :

Provided that, where the assessee is a company or a firm constituted under a registered instrument of partnership specifying the individual shares of the partners and the taxable income of such company or firm is [1] two thousand rupees per annum or upwards, income-tax shall be levied at the maximum rate specified in Schedule I.

CHAPTER II.

DEDUCTIONS AND ASSESSMENT.

15. (1) Income-tax shall, unless otherwise prescribed in the case of any security of the Government of India, be deducted at the time of payment in respect of income chargeable under the following heads :—

- (i) "Salaries"; and
- (ii) "Interest on securities."

(2) An employer or other person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the amount payable at the rate specified in Schedule I in respect of such amount, provided that, if the payment is a recurring one and in respect of any period less than a year, the rate shall be determined with reference to the amount which would be proportionately payable in a year. The deduction so made shall be treated as a payment of income-tax on behalf of the person from whose earnings the deduction was made, and credit shall be given to him therefor in the next adjustment under section 19.

(3) The person responsible for paying any income chargeable under the head "Interest on securities" shall, at the time of payment, deduct income-tax on the amount of the interest payable at the maximum rate specified in Schedule I. The deduction so made shall be treated as payment of income-tax on behalf of the owner of the security, and credit shall be given to him therefor in the next adjustment under section 19 :

Leg. Changes:—[1] The word 'two' was substituted for the word 'one' by Act IV of 1919.

Provided that, if the owner of the security obtains a refund of any portion of the tax so deducted in accordance with the provisions of this Act, no credit shall be given for the amount of such refund.

(4) All sums deducted in accordance with the provisions of sub-section (2) or (3) shall be paid within the prescribed time by the person making the deduction to the credit of the Government of India, or as the Governor General in Council directs.

(5) If any such person does not deduct and pay the tax as required by this section, he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

(6) The power to deduct under this section shall be without prejudice to any other mode of recovery.

(7) In the case of income chargeable under any other head than those abovementioned, the tax shall be payable by the assessee direct, and shall be the amount assessed under this Act subject to such adjustment as aforesaid.

16. The prescribed person in the case of every Government office, and the principal officer of every local authority, and of every company, and of every other public body or association not being a local authority or company, and every private employer who has agreed to recover income-tax on behalf of Government shall prepare, and within fifteen days from the 31st day of March in each year, deliver or cause to be delivered to the Collector, in the prescribed form, a return in writing showing—

- (a) the name and, so far as it is known, the address, of every person who was receiving on the said 31st day of March, or has received during the year ending on that date, from the authority, company, body, association or private employer, as the case may be, any income chargeable under the head "Salaries" of such amount as may be prescribed not being less than six hundred rupees per annum ;
- (b) the amount of the income so received by each such person, and the time or times at which the same was paid ;
- (c) the amount deducted in respect of income-tax from each such person.

17. (1) The principal officer of every company shall prepare, and, on or before the fifteenth day of June in each year, deliver or cause to be delivered to the Collector a return in the prescribed form and verified in the prescribed manner of the total income of the company during the previous year :

Return by asses-
sees. Provided that the Collector may, in his discretion, extend the date for the delivery of the return in the case of any company or class of companies.

(2) In the case of any person other than a company whose taxable income is, in the Collector's opinion, not less than two thousand rupees, the Collector shall serve a notice upon him requiring him to furnish,

within such period as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income during the previous year.

[1] (3) * * *

18. (1) If the Collector is satisfied that a return made under section 17 is correct and complete, he shall assess the sum payable by the assessee for the year in which the return is made on the basis of such return.

Assessment.

(2) If the Collector has reason to believe that a return made under section 17 is incorrect or incomplete, he shall serve on the person who made the return a notice requiring him, on a date to be therein mentioned, either to attend at the Collector's office and produce, or to cause to be there produced for the inspection of the Collector, such accounts and documents as the Collector may require and any evidence on which the assessee may rely in support of the return.

(3) On the day specified in the notice, or as soon afterwards as may be, the Collector, after examining such accounts and documents, and hearing any evidence which the assessee may produce and such other evidence as the Collector may require, shall, by an order in writing, determine the total income of the assessee for the previous year, and assess the sum payable by the assessee for the year in which the return is made on the basis of such determination.

(4) If the principal officer of any company or any other person fails to make a return under section^[2] 17 (1), or (2)^[2], as the case may be, or having made a return, fails to attend or fails to comply substantially with all the terms of a notice issued under section 18, sub-section (2), the Collector shall make the assessment to the best of his judgment.

(5) The sum to be assessed in every case shall be a sum calculated on the aggregate of the assessee's income in the previous year chargeable under each of the heads mentioned in sections 8 to 11 at the rate applicable to his total income in that year.

19. When the Collector has, in any year after the commencement of this Act for which income-tax is leviable under section 14 (2), ascertained, either from the return made by an assessee or after further inquiry, the total income actually received by or accrued to the assessee in the previous year, he shall compute the income-tax which would have been payable in respect thereof if it had been levied in such previous year with reference to the amount of the income so ascertained and the law then in force; and the difference between the sum so computed and the aggregate of the sums already paid by or on behalf of the assessee in respect of income-tax for such previous year, shall be paid by or refunded to the assessee, as the case may be:

Adjustment with actual income when ascertained.

Provided that no adjustment shall be made under the section in respect of any income-tax assessed or paid before the passing of this Act:

Leg. Changes:—[1] Sub-section (3) was repealed by Act IV of 1919. [2] "17 (1) or (2)" were substituted for "17 (1), (2) or (3)" by Act IV of 1919.

Provided also that it shall be competent to—

- (a) an assessee; or
- (b) in the case of the death or insolvency of an assessee, his representative in interest; or
- (c) with reference to any year for which income-tax is leviable under section 14 (2), the Collector;

in any year to claim an immediate adjustment to date of the sums already paid by or on behalf of an assessee in that year, upon the basis of the total income actually received by or accrued to him in that year; and upon such claim being made, all the provisions of this Chapter shall apply, so far as may be necessary, for the determination of the proper sum to be paid by or refunded to the assessee or his representative in interest in respect of income-tax down to the date of such determination, and the same shall be paid or refunded accordingly.

20. (a) When the Collector has determined a sum to be payable by an assessee under either section 18 or section 19, he shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable.

21. (1) Any assessee objecting to the amount or rate at which he is assessed under section 18 or to an adjustment made under section 19, or denying his liability to be assessed under this Act may, unless he or, in the case of a company, the principal officer thereof, has knowingly and wilfully failed to make a return under section 17, or substantially to comply with all the terms of a notice served on him under section 18, apply by petition to the Commissioner for relief against any order of the Collector in respect of such assessment or adjustment.

(2) The petition shall ordinarily be presented within thirty days of receipt of the notice of demand; but the Commissioner may receive a petition after the expiration of that period, if he is satisfied that the objector had sufficient cause for not presenting it within that period.

(3) The petition shall be in the prescribed form and verified in the prescribed manner.

22. The Commissioner (c) shall fix a day and place for the hearing of the petition, and on the day and at the place so fixed, or on the day and at the place if any, to which he has adjourned the hearing, shall hear the petition and pass such order thereon, whether by way of confirmation, reduction, enhancement or cancellation, of the assessment, or adjustment or otherwise and fixing such time for payment, as he thinks fit.

23. The Chief Revenue-authority may, of its own motion, call for the record of any assessment proceeding which has been taken by any officer subordinate to it, and make such inquiry and pass such orders thereon as it thinks fit:

Case-law :—(a) Effect of non-determination by Collector, 31 M. 35. (b) Collector hearing objection petition is a Revenue Court and can proceed under S. 476, Cr. P. Code, 44 P.R. 1906, Or.; 15 A.L.J. 168=38 Ind. Cas. 993. (c) Deputy Collector hearing income-tax appeal is not a Criminal Court, 23 M.L.J. 393.

Provided that it shall not pass any order enhancing the sum payable by an assessee without hearing him or giving him a reasonable opportunity of being heard either in person or by pleader.

24. If the Collector or the Commissioner in making any assessment of adjustment under this Chapter is satisfied that the assessee has concealed the particulars of his income, or has deliberately furnished inaccurate particulars of such income, and has thereby returned it below its real amount, the Collector or the Commissioner may direct that the assessee shall pay on the difference between his income as finally ascertained and the amount originally returned by him income-tax at a rate not exceeding double the rate which would otherwise have been payable :

Provided that no such order shall be made, unless the assessee has been heard, or has been given a reasonable opportunity of being heard :

Provided further that no prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penal assessment is made under this section.

25. If for any reason income chargeable under this Act has escaped assessment in any year, or has been assessed at too low a rate, the Collector may, at any time in the year next following, assess or re-assess such income, and all the provisions of this Act shall apply accordingly.

26. The Collector may, at any time within one year from the date of any demand made upon an assessee, rectify any mistake in connection therewith which has been brought to his notice by such assessee, and make a refund to such assessee in respect thereof.

27. The Collector or Commissioner shall, for the purposes of any inquiry under this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters :—

- (a) enforcing the attendance of any person and examining him on oath or affirmation ;
- (b) compelling the production of documents ; and
- (c) issuing commissions for the examination of witness ;

and any proceeding before a Collector or Commissioner under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 of the Indian Penal Code.

XIV of 1860.

28. The Collector or Commissioner may, for the purposes of this Act,

- (1) require any person to furnish a return, in the prescribed form, containing, to the best of his belief, the name and address of every person employed in his service who is receiving in virtue of such employment any income not chargeable under the

head "Salaries," of such amount as may be prescribed, not being less than six hundred rupees per annum ;

- (2) require any firm or Hindu undivided family to furnish him with a return of the partners in the firm, or the adult male members of the family, as the case may be, and of their addresses ;
- (3) require any person whom he has reason to believe to be a trustee, guardian, or agent to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, or agent, and of their addresses.

29. The Collector or Commissioner, or any person authorised in writing in this behalf by the Collector or Commissioner, may inspect and, if necessary, take copies or cause copies to be taken of the register of members of any company or of any entry in such register.

Power to inspect the register of members of any company.

CHAPTER III.

SUMMARY ASSESSMENT.

30. (1) In the case of persons whose taxable income is, in the Collector's opinion, one thousand rupees or upwards, but less than two thousand rupees, the Collector shall, save in cases in which he has served a notice under section 17 (3), make a summary assessment on the income of such persons to the best of his judgment.

Summary assessment.

(2) Notice of such summary assessment and of the amount of the tax payable thereunder and of the time and the place at which, and the person to whom, such tax is to be paid shall be given either by local publication in the prescribed manner of a list of such assessments, or in such other way as may be prescribed :

Provided that due publicity shall be given to the assessee's right to apply to the Collector in the manner provided for in the next sub-section within the prescribed period, and that reasonable notice shall be given of the place at which, and the person from whom, the assessee can obtain a form of return should he wish to submit one.

(3) Any assessee in respect of whom a summary assessment has been made under this section may, within the prescribed period, apply to the Collector for the cancellation or revision of the assessment, and the Collector shall, after examining any accounts and documents and hearing any evidence which the assessee may produce, and such other evidence as the Collector may require, determine, by order in writing, the amount of the tax, if any, payable by the assessee, and such determination shall be final :

Provided that, if the person making the application files therewith a return of his income in the prescribed form and verified in the prescribed manner, the application shall be deemed to be a return under section 17, and shall be dealt with accordingly.

CHAPTER IV.

LIABILITY IN SPECIAL CASES.

31. In the case of any guardian, trustee or agent of any person being a minor, lunatic or idiot or residing out of British India (all of which persons are hereinafter in this section included in the term beneficiary) being in receipt on behalf of such beneficiary of any income chargeable under this Act, the tax shall be levied upon and recoverable from such guardian, trustee or agent as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age, sound mind, or resident in British India, and in direct receipt of such income, and all the provisions of this Act shall apply accordingly.

32. In the case of income chargeable under this Act which is received by the Courts of Wards, the Administrators-General, the Official Trustees or by any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager in the like manner and to the same amount as it would be leviable upon and recoverable from any person on whose behalf such income is received, and all the provisions of this Act shall apply accordingly.

33. (1) In the case of any person residing out of British India, all profits or gains accruing or arising to such person, whether directly or indirectly, through or from any business connection in British India, shall be deemed to be income accruing or arising within British India, and shall be chargeable to income-tax in the name of the agent of any such person, and such agent shall be deemed to be for all the purposes of this Act the assessee in respect of such income-tax :

Provided that any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come, within British India.

(2) Where a person not resident in British India, and not being a British subject or a firm or company constituted within His Majesty's dominions or a branch thereof, carries on business with a person resident in British India, and it appears to the Collector or the Commissioner, as the case may be, that owing to the close connection between the resident and the non-resident person and to the substantial control exercised by the non-resident over the resident, the course of business between those persons is so arranged, that the business done by the resident in pursuance of his connection with the non-resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom or which may reasonably be deemed to have been derived therefrom, shall be chargeable

to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax.

34. Any person employed by or on behalf of a person residing out of British India, or having any business connection with such person, upon whom the Collector has caused a notice to be served of his intention of treating him as the agent of the non-resident person shall, for the purposes of this Act, be deemed to be such agent (a) :

Provided that no person shall be deemed to be the agent of a non-resident person, unless he has had an opportunity of being heard by the Collector as to his liability.

CHAPTER V.

RECOVERY OF TAX.

35. The amount of income-tax specified as payable in a notice of demand under section 20 or an order under section 22, section 23 or section 24, [1] * * shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the notice or order, and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented a petition under section 21, the Collector may in his discretion treat the assessee as not being in default as long as such petition is undisposed of.

36. (1) When an assessee is in default in making a payment of income-tax, the Collector, in his discretion, may recover from him a sum not exceeding double the amount of the tax, either as if it were an arrear of land-revenue, or by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the territories administered by the Local Government to which the Collector is subordinate.

(2) If any assessee is in receipt of any income chargeable under the head "Salaries," the Collector may require any person paying the same to deduct from any payment subsequent to the date of such requisition any sum recoverable under sub-section (1), and such person shall comply with any such requisition and shall pay the sums so deducted to the credit of the Government of India, or as the Governor General in Council directs.

(3) The Local Government may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (1) for the recovery of income-tax.

Leg. Changes:—[1] The words "or in a notice or order under section 20" were repealed by Act IV of 1919.

Case-law:—(a) His liability personal, 22 B. 332.

(4) The Local Government may direct, with respect to any specified area that income-tax shall be recovered therein, with, and as an addition to, any municipal tax or local rate by the same person and in the same manner as the municipal tax or local rate is recovered.

(5) Save in accordance with the provisions of section 33 (1), no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the year in which any demand is made under this Act.

CHAPTER VI.

REFUNDS TO SHAREHOLDERS AND OTHERS.

Refund to individual shareholders, partners and owners of securities.

37. If—

- (a) a shareholder in a company who has received any dividend from the company ; or
- (b) a partner in a firm on which income-tax has been levied at the maximum rate, in accordance with the proviso to section 14, who has received a share of the profits of the firm ; or
- (c) the owner of a security from the interest on which income-tax has been deducted in accordance with the provisions of section 15 ;

satisfies the Collector that his total income in the previous year was less than any one, as the case may be, of the amounts specified in Schedule II, he shall be entitled to a refund of a sum calculated on such dividend, share of profits or interest at the rates specified in the same Schedule against each such amount.

Limitation of claims for refund.

38. No claim to any refund under section 37 shall be allowed, unless it is made within one year from the last day of the year to which the claim relates.

CHAPTER VII.

OFFENCES AND PENALTIES.

Failure to make payments or deliver returns or statements or allow inspection.

39. If a person fails without reasonable cause or excuse—

- (a) to deduct and pay any tax as required by section 15 or under section 36 (2) ;
- (b) to deliver or cause to be delivered to the Collector in due time any of the returns mentioned in section 16, section 17, or section 28 ;
- (c) to grant inspection or allow copies to be taken in accordance with the provisions of section 29 ;
- (d) to attend or to produce, or cause to be produced, on or before the date mentioned in a notice under section 18, such accounts and documents as are referred to in the notice,

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

40. If a person makes a statement in a verification mentioned in section 17 or section 21 (3) which is false, and which he either knows or believes to be false or does not believe to be true, he shall be deemed to have committed the offence described in section 177 of the Indian Penal Code.

XLV of 1860.

41. (1) A person shall not be proceeded against for an offence under section 39 or section 40, except at the instance of the Collector.

(2) The Collector may stay any such proceeding or compound any such offence.

42. All particulars contained in any statement or return made or furnished under the provisions of this Act shall be treated as confidential, and if a public servant discloses any particulars contained in any statement or return made or furnished under this Act (b), he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine:

Provided that no prosecution shall be instituted under this section, except with the previous sanction of the Local Government.

CHAPTER VIII.

MISCELLANEOUS.

43. (1) The Governor General in Council may make rules for carrying out the purposes of this Act and for the ascertainment and determination of any class of income, and may, subject to such restrictions and conditions as he may impose, delegate to a Local Government the power to make such rules so far as regards the territories subject to that Government.

(2) Without prejudice to the generality of the foregoing power, such rules may—

- (a) when income is derived in part from agriculture and in part from business, prescribe the manner, whether with reference to a class or in particular cases, by which the taxable income shall be arrived at;
- (b) prescribe the manner in which, and the procedure by which, the taxable income of Insurance Companies shall be arrived at;
- (c) prescribe the manner in which, and the procedure by which, the taxable income of persons not resident in British India, or

Case-law:—(a) Does not include District Magistrate, 15 A.L.J. 163=38 Ind. Cas. 993; order in the capacity of Collector necessary for prosecution for making false statement, 12 A.L.J. 258=23 Ind. Cas. 504; his order open to revision under S. 485, Crim. Pro. Code, 22 Ind. Cas. 146=15 Cr. L.J. 2. (b) See 32 M. 62.

of persons deemed to be assesseees in respect thereof, shall be arrived at;

- (d) provide for a system of composition of assessments and prescribe the conditions under which the Collector may enter into composition with assesseees as to their assessment;
- (e) prescribe the procedure to be followed on applications for refunds;
- (f) provide for any matter which by this Act is to be prescribed.

(3) Rules made under this section shall be published in the Gazette of India or the local official Gazette, as the case may be, and shall thereupon have effect as if enacted in this Act.

44. The Governor General in Council may, by notification in the Gazette of India, make an exemption, reduction in rate or other modification, in respect of income-tax in favour of any class of income, or in regard to the whole or any part of the income of any class of persons.

45. When any money is paid under this Act to the Collector, or is recovered thereunder by him, he shall give a receipt for the same, specifying the prescribed particulars.

46.(a) A notice or requisition under this Act may be served on the person therein named, either by post, or by the delivery or tender to him of a copy of the notice or requisition in the manner provided by the Code of Civil Procedure, 1908, for the service of summons.

V of 1908.

47. (1) When an assessee has several places of business in territories subject to different Local Governments, the Governor General in Council may declare which of those places shall, for the purposes of this Act, be deemed to be his principal place of business^(b).

(2) When an assessee has several places of business in the territories subject to a single Local Government, that Government may declare which of them shall, for the purposes of this Act, be deemed to be his principal place of business.

(3) The powers given by this section may be delegated to, and exercised by, such officers as the Governor General in Council or the Local Government, as the case may be, may appoint in this behalf.

48. Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

49. All powers conferred by, or conferrable under, this Act may be exercised from time to time as occasion requires.

Case-law :—(a) See 17 A.L.J. 146. **(b)** Applies to company or firm, 5 C.W.N. 257.

50. The Local Government may, by notification in the local official Gazette, delegate to the Chief Revenue-authority all or any of the powers conferred on it by this Act for the appointment of officers to exercise or perform the powers or duties of Collectors or Commissioners, and all or any of the powers conferred on it by section 36 and the proviso to section 42.

Delegation of certain powers of Local Government.

51. (1) If, in the course of any assessment under this Act or any proceeding in connection therewith other than a proceeding under Chapter VII, a question has arisen with reference to the interpretation of any of the provisions of this Act or of any rule thereunder, the Chief Revenue-authority may, either on its own motion or on reference from any Revenue-officer subordinate to it, draw up a statement of the case, and refer it, with its own opinion thereon, to the High Court, and shall so refer any such question on the application of the assessee, unless it is satisfied that the application is frivolous or that a reference is unnecessary.

Statement of case by Chief Revenue-authority to High Court.

(2) If the High Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue-authority by which it was stated, to make such additions thereto, or alterations therein, as the Court may direct in that behalf.

(3) The High Court upon the hearing of any such case shall decide the questions raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Revenue-authority by which the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar; and the Revenue-authority shall dispose of the case accordingly, or, if the case arose on reference from any Revenue-officer subordinate to it, shall forward a copy of such judgment to such officer who shall dispose of the case conformably to such judgment.

(4) Where a reference is made to the High Court on the application of an assessee, costs shall be in the discretion of the Court.

52. No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any Government officer for anything in good faith done or intended to be done under this Act.

Bar of suits in Civil Court.

53. The enactments mentioned in Schedule III are hereby repealed to the extent specified in the fourth column thereof:

Repeal.

Provided that such repeal shall not affect the liability of any person to pay any sum due from him or any existing right of refund under any of the said enactments:

Provided, further, that such repeal shall not affect the Super-tax VIII of 1917. Act, 1917, and any provisions of the said enactments which have been applied or incorporated by reference in the said Act shall, for the purposes of that Act, continue to be in force.

SCHEDULE I.

(See section 14.)

Rates of Tax.

	Rate.
I.—When the taxable income is less than Rs. 2,000.	Nil.
II.—When the taxable income is Rs. 2,000 or upwards, and	
(i) The total income is less than Rs. 5,000 ...	Five pies in the rupee.
(ii) The total income is Rs. 5,000 or upwards, but is less than Rs. 10,000.	Six pies in the rupee.
(iii) The total income is Rs. 10,000 or upwards, but is less than Rs. 25,000.	Nine pies in the rupee.
(iv) The total income is Rs. 25,000 or upwards ...	One anna in the rupee.

SCHEDULE II.

(See section 37.)

Rates of Refund.

Amount.	Refund.
1. Less than Rs. 2 000 ...	... One anna in the rupee.
2. Rs. 2,000 or upwards, but less than Rs. 5,000 ...	... Seven pies in the rupee.
3. Rs. 5,000 or upwards, but less than Rs. 10,000 ...	... Six pies in the rupee.
4. Rs. 10,000 or upwards, but less than Rs. 25,000 ...	... Three pies in the rupee.

SCHEDULE III.

(See section 53.)

Enactments Repealed.

1	2	3	4
Year.	No.	Short title.	Extent of repeal.
1886	II	The Indian Income-tax Act, 1886.	So much as has not been repealed.
1897	XIV	The Indian Short Titles Act, 1897.	So much of the Schedule as relates to the Indian Income-tax Act, 1886.
1903	XI	The Indian Income-tax (Amendment) Act, 1903.	So much as has not been repealed.
1914	IV	The Decentralization Act, 1914 ...	So much of the Schedule as relates to the Indian Income tax Act, 1886.
1916	V	The Indian Income-tax (Amendment, Act, 1916	The whole.
1917	VII	The Indian Income-tax (Amendment, Act, 1917.	The whole.

THE INDIAN DEFENCE FORCE ACT, 1917.

(ACT III OF 1917.)

[Passed on the 28th February, 1917.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1917	III	Indian Defence Force	Am., by Act VIII of 1918. " " XIX of 1918. " " XXI of 1918. " " VII of 1919.

An Act to constitute an Indian Defence Force, and for other purposes.

WHEREAS it is necessary to constitute an Indian Defence Force, and compulsorily to enrol for service in that Force certain European British subjects ; and

Whereas in the case of others, it is deemed sufficient for the present to take powers to enrol for such service only such persons as may offer themselves for enrolment ; It is hereby enacted as follows :—

Short title, extent and duration. 1. (1) This Act may be called the Indian Defence Force Act, 1917.

(2) It extends to the whole of British India, including British Baluchistan and Sonthal Parganas, and applies also to European British subjects within the territories of any Native Prince or Chief in India [1] and to persons deemed to be enrolled under section 3 of this Act whether within or without the limits of India.[4]

(3) It shall remain in force during the continuance of the present war, and for a period of [2] one year [2] thereafter.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

"European British subject" means a European British subject as defined in the Code of Criminal Procedure, 1898, and shall, for the purposes of this Act, be deemed to include every person who, before the third day of March 1917, has filled up, signed and lodged Form A with the Registration Authority under the Registration Ordinance, 1917, and also every person who at the commencement of the Act is a member of a corps of volunteers constituted under the Indian Volunteers Act, 1869 ;

"Prescribed" means prescribed by rules made under this Act.

3. Every male European British subject who, on the first day of February 1917, was ordinarily resident in India or thereafter becomes so resident, and who for the time being has attained the age of eighteen years and has not attained the age of forty-one years, and who is

Obligation of general military service.

Leg. Changes :—[1] The words "and to persons.....limits of India" were added by Act XXI of 1918. [2] The words "one year" were substituted for the words "six months" by Act VII of 1919.

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not within the exceptions set out in the Schedule to this Act, shall be deemed to be enrolled for general military service within the meaning of this Act :

Provided that, if any person referred to in this section whilst engaged in actual military employment, of which fact the Commander-in-Chief in India shall be the sole judge, attains the age of forty-one years, such person shall continue to serve for such additional period not exceeding one year as the prescribed military authority may direct.

4. Every male European British subject who, on the first day of February, 1917, was ordinarily resident in India, or thereafter becomes so resident, and who for the time being has attained the age of forty-one years but has not attained the age of fifty years, and who is not within the exceptions set out in the Schedule to this Act, shall be deemed to be enrolled for local military service within the meaning of this Act.

Obligation of local military service.

5. Every male European British subject who, on the first day of February, 1917, was ordinarily resident in India, or thereafter becomes so resident, and for the time being has attained the age of sixteen years but has not attained the age of eighteen years, shall be deemed to be enrolled for local military service but shall only be liable to such military training as may be provided for by regulations made under this Act, and shall not be liable to any other form of military service.

Obligation of local military service and liability to military training.

6. Every person deemed to be enrolled for military service, whether local or general, shall, as from the commencement of this Act, be deemed to be enrolled in the Indian Defence Force, and may be appointed to such corps or unit thereof as he may thereafter be assigned to, and shall, if he is a person deemed to be enrolled for general military service, be liable to serve [1] within or without the limits of India.[1]

Obligation on persons enrolled for military service.

7. Every person deemed to be enrolled for local military service shall be subject to any rules and regulations relating to that service which may be made under this Act :

Obligation on persons enrolled for local military service.

Provided that no such rule or regulation shall require any such person to serve outside the limits of the prescribed local area.

8. (1) Every person deemed to be enrolled for general military service shall be subject to any rules and regulations relating to that service which may be made under this Act.

Obligation on persons enrolled for general military service.

(2) Every such person, when called out in the prescribed manner for general military service, shall be subject to the provisions of the Army Act and any orders or regulations made thereunder where upon the said

Leg. Changes :—[1] The words "within or without the limits of India" were substituted for "in any part of India" by Act XXI of 1918.

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Act, orders and regulations shall apply to him as if the same were enacted in this Act, and as if such person held the same rank in the Army as he holds for the time being in the Indian Defence Force.

9. If any question arises, with reference to this Act, whether any person is a European British subject within the meaning of this Act, or "is ordinarily resident" in British India, or is within the exceptions set out in the Schedule or as to the age of any person, the prescribed authority, or a person authorized in this behalf in writing by that authority, shall apply to the District Magistrate or to an officer specially empowered in this behalf by the Local Government, in the district or local area in which the person to whom the dispute relates is for the time being, and such Magistrate or other officer after hearing such person or giving him a reasonable opportunity of being heard, shall summarily determine the question, and the decision of such Magistrate or other officer shall be final for all the purposes of this Act :

Provided that if any question referred to in this section has been decided in accordance with the procedure provided in the Registration Ordinance, 1917, such decision shall be deemed to be a decision under this section of this Act.

10. If any person who is deemed to be enrolled for military service, whether local or general, disobeys any notice or order calling him out for such service, any District or Chief Presidency Magistrate may, on the application of the prescribed authority, or of a person authorized in this behalf in writing by that authority, cause such person to be arrested and brought before him, and if the Magistrate is satisfied that he is a person to whom section 3, 4 or 5 of this Act applies, and who has been called out for such service, the Magistrate without prejudice to any penalty which such person may have incurred shall make over such person to the custody of the military authorities.

11. (1) Application may be made to the prescribed authority by, or (subject to rules made under this Act) in respect of, any person referred to in section 3, 4 or 5, for the issue to him of a certificate of exemption under the provisions of this Act on any of the following grounds, namely :—

- (a) that it is expedient in the national interest that he should instead of being employed in military service be engaged in other work ; or
- (b) if he is being educated or trained for any work that it is expedient in the national interest that he should continue to be so educated or trained ; or
- (c) ill-health or infirmity ;

and the prescribed authority, if it considers the grounds of the application established, shall grant such a certificate.

(2) The Governor General in Council may also, by order in writing, direct the issue to such persons or class of persons, as he thinks fit, of certificates of exemption if he is satisfied that such a course is desirable in the national interest.

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(3) Any certificate of exemption may be absolute, conditional, or temporary, and may be renewed, varied or withdrawn at any time by the authority which granted it, and may provide that a person liable to general military service shall perform local military service :

Provided that every conditional or temporary certificate shall state the conditions under which or the period for which it is granted.

(4) If, for the purpose of obtaining exemption for himself or any other person, or for the purpose of obtaining the renewal, variation, or withdrawal of certificate, any person makes a false statement or false representation, to any authority under this section, he shall be punishable with imprisonment for a term which may extend to six months, or with fine or with both.

[1] 11-A. Any European British subject who for the time being has attained the age of 50 years may offer himself for enrolment for general military service or local military service, and may be enrolled accordingly in the prescribed manner, and any person so enrolled shall be liable to all the obligations imposed on persons deemed to be enrolled for general military service or local military service within the meaning of this Act, as the case may be, and shall continue to be so liable until relieved thereof in the prescribed manner.

Enrolment of persons other than European British subjects in the Indian Defence Force for general military service.

12. [2] (1) The Governor General in Council may constitute in any local area corps or units, for the enrolment in the Indian Defence Force for general military service, of persons other than European British subjects.

[2] (2) When any corps or unit has been constituted under sub section (1), the Governor General in Council may, by notification in the Gazette of India, declare that, in any local area specified in the notification, persons other than European British subjects who satisfy the prescribed conditions and offer themselves for enrolment for general military service may, as long as the notification continues in force, be enrolled accordingly in such corps or unit in the prescribed manner.

(3) Every person enrolled in a corps or unit constituted under sub-section (1) shall be liable to serve in any part of India, shall be subject to all rules and regulations that may be made under this Act, relating to his corps or unit, and shall not quit such corps or unit except in the prescribed manner.

(4) Every such person shall, when called out in the prescribed manner for general military service, be subject to the Indian Army Act, VIII of 1911, 1911, and the rules made thereunder whereupon the said Act and rules shall apply to him as if he held the same rank in the Indian Army as he holds for the time being in the Indian Defence Force.

Power to make rules.

13. (1) The Governor General in Council may make rules to carry out the purposes of this Act.

Leg. Changes :—[1] S. 11-A was added by Act XIX of 1918. [2] Sub-sections (1) and (2) of S. 12 were substituted for the original sub-section (1) of S. 12 and the original sub-sections (2) and (3) are now re-numbered as sub-sections (3) and (4) by Act VIII of 1918.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe authorities for the purposes of sections 9 and 10 ;
- (b) constitute authorities and prescribe the procedure of such authorities for the purpose of considering applications for exemption from military service ;
- (c) prescribe the time within which, and the form in which, such application may be made, and the persons other than the person to be exempted by whom it may be made ;
- (d) prescribe the conditions subject to which persons other than European British subjects should be permitted to offer themselves for general military service ;
- (e) prescribe the military or other obligations to which persons or any class of persons enrolled or deemed to be enrolled under this Act shall respectively be liable ; constitute or specify Courts for the trial and punishment of breaches of such obligations ; prescribe the procedure to be followed by such Courts ; and provide for the enforcement or carrying out of the orders or sentences of such Courts ;
- (f) provide for the medical examination of persons liable to general military service ;
- (g) provide for the calling out and all purposes ancillary thereto of persons or any class of persons liable to general military service, and constitute authorities for the purpose of assisting in the selection of persons to be so called out ; and
- (h) provide for any matter in this Act directed to be prescribed.

(3) Rules made under this section may provide that any contravention thereof or of any order or notice issued under the authority of any such rule shall be punishable with imprisonment for a term which may extend to six months, or with fine or with both.

(4) All rules made under this Act shall be published in the Gazette of India, and on such publication shall have effect as if enacted in this Act.

14. (1) The Commander-in-Chief in India may, subject to the control of the Governor General in Council, specify the summary and minor punishments for breach of any rule made under this Act to which persons enrolled or deemed to be enrolled under this Act shall be liable, without the intervention of a Court, and the officer or officers by whom and the extent to which such summary and minor punishments may be awarded.

(2) No punishment exceeding in severity imprisonment in military custody for a period of seven days shall be imposed as a summary punishment, and no punishment involving any kind of imprisonment shall be imposed as a minor punishment.

15. (1) The Commander-in-Chief in India may make regulations providing generally for all details connected with the organization, *personnel*, duties, and military training of any persons liable to military service or training under this Act.

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(2) In particular and without prejudice to the generality of the foregoing power, such regulations may—

- (a) specify the units, whether of regular troops or any other military force with which any person or class of persons enrolled or deemed to be enrolled under this Act shall serve or undergo military training or constitute special military units for that purpose ;
- (b) specify the courses of training or instruction to be followed by any person or class of persons liable to military service or training under this Act ; and
- (c) provide for and regulate the remuneration, allowances, gratuities or compensation (if any) to be paid to any person or class of persons undergoing military service or training under this Act or to their dependents.

(3) Regulations made under this section may provide that any contravention thereof, or of any order or notice issued under the authority of any such regulation, shall be punishable with fine which may extend to five hundred rupees.

Act not to apply to persons confined in a prison or lunatic asylum.

16. Nothing in this Act shall apply to any person confined in a prison or lunatic asylum.

Power to disband corps or unit.

17. The Governor General in Council may disband any corps or unit constituted under this Act.

Provisions of Registration Ordinance, 1917, continued in force.

18. The provisions of the Registration Ordinance, 1917, shall be in force during the continuance I of 1917. of this Act, and shall have effect as if they had been enacted in this Act :

Provided that the following amendments shall be made therein, namely :—

(1) In section 3, sub-section (1), of the said Ordinance, for the words " had not attained the age of fifty years on the first day of February, 1917," the " words who for the time being has not attained the age of fifty years," shall be substituted.

(2) In Schedule II of the said Ordinance in entry (1) after the word " forces " the words " or of the Royal Indian Marine Service " shall be inserted, and in entry (2) for the word " British " the word " religious " shall be substituted.

THE SCHEDULE.

[See sections 3 and 4.]

(Exceptions.)

(1) Members of His Majesty's naval and military forces or of the Royal Indian Marine Service other than Volunteers enrolled under the Indian Volunteers' Act, 1869.

XX of 1869.

(2) Persons in Holy Orders or regular Ministers of any religious denomination.

(3) Persons who have at any time since the beginning of the war been prisoners of war, captured or interned by the enemy, or have been released or exchanged.

**THE INLAND BONDED WAREHOUSES
ACT, 1896.**

(ACT VIII OF 1896.)

[Passed on the 5th March, 1896.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1887 1896	XXI VIII	Inland Bonded Warehouses Inland Bonded Warehouses.	... Rep., Act VIII of 1896.

An Act to provide for the establishment of bonded warehouses at places other than customs-ports, and to afford facilities for the bonding of salt in such warehouses.

WHEREAS it is expedient to provide for the establishment of bonded warehouses at places other than customs-ports, and to afford facilities for the bonding of salt in such warehouses ; It is hereby enacted as follows :—

Title, construction
and commence-
ment.

1. (1) This Act may be called the Inland Bonded Warehouses Act, 1896.

(2) It shall be read with, and taken as part of, the Sea Customs VIII of 1878, Act, 1878 ; and

(3) It shall come into force at once.

2. Sections 5 to 7, both inclusive, of this Act shall extend only to such parts of British India as the Governor General in Council may from time to time, by notification in the Gazette of India, direct in this behalf.

Extent.

Inland Bonded Warehouses.

XXI of 1887. Repeal.

3. (1) The Inland Bonded Warehouses Act, 1887, is hereby repealed.

II of 1896. (2) The reference to that Act in section 3, clause (7), of the Cotton Duties Act, 1896, shall be read as if it were made to this Act.

VIII of 1878. 4. (1) Notwithstanding anything contained in the Sea Customs Act, 1878, the Chief Customs-authority may from time to time, with the previous sanction of the Local Government, appoint a public or license a private warehouse at any place which is not a warehousing port, and may with the like sanction cancel such appointment or license.

Inland bonded
warehouses and law
applicable thereto.

(2) In reference to such a place and a warehouse appointed or licensed thereat the provisions of the said Act with respect to the levy of customs-duties on goods brought in bond from one customs-port to another, and with respect to warehousing, shall be construed as if the place were a customs-port and a warehousing port, and the warehouse a public or a private warehouse, as the case may be, appointed or licensed thereat under that Act.

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(3) All rules applicable to such warehouses, and to the weighment and removal thereto of salt, and in force at the commencement of this Act, shall remain so applicable until they shall be duly superseded or altered.

(4) Every warehouse appointed or licensed under the provisions of the Inland Bonded Warehouses Act, 1887, shall be deemed to have been XXI of 1887 appointed or licensed under this Act.

Salt Time-Bonds.

5. Notwithstanding anything contained in the Sea Customs Act, 1878, or in section 4 of this Act, the Chief Customs- VIII of 1878
Conveyance of salt to inland bonded warehouses under bonds. authority may permit salt removed from ship board or from a warehouse appointed or licensed under the Sea Customs Act, 1878, to be conveyed, under a bond securing the subsequent payment of the duty leviable in respect of the salt so removed and in accordance with such rules as may be prescribed in this behalf by the Local Government, to a warehouse appointed or licensed for that purpose by the Chief Customs-authority.

6. Every bond executed in accordance with the provisions of the last preceding section shall be in the form hereto annexed, or, when such form is inapplicable or insufficient, in such other form as is from time to time prescribed by the Chief Customs-authority :

Provided that the time allowed by such bond for the payment of the duty leviable on the salt included therein shall not exceed the time within which it may reasonably be expected that the whole of such salt shall have passed into consumption, and shall in no case exceed six months :

Provided, also, that the Chief Customs-authority may at any time require the duty to be paid to the extent to which the salt may have been delivered from the warehouse.

7. The Local Government may, with the previous sanction of the Governor General in Council, make rules, consistent with the provisions of this Act, to regulate—

- (1) the appointment or licensing of warehouses under section 5 ;
- (2) the inspection by Government officers of such warehouses ;
- (3) the safe custody of salt in transit under the provisions of the said section ;
- (4) the removal of salt from a warehouse appointed or licensed under the said section ;
- (5) the nature of the security to be required from a person executing a bond in accordance with the provisions of the said section and the time and place of payment of the sum recoverable under such bond ; and
- (6) generally such other matters as may be deemed necessary to secure the safety of the public revenue.

8. Nothing in section 5 or section 6 shall prevent the removal of salt in any manner in which it may for the time being be lawfully removable under section 4.

Inland Bonded W. ACT VIII OF 1896 (INLAND BONDED WARE.). Forms

FORM OF BOND.

(See section 6.)

No. 189.

We, A. B.,

now of
; and C. D.,

, of the same place, are jointly and severally bound to Her Majesty's Secretary of State for India in Council in the sum of Government rupees to be paid to the said Secretary of State in Council, for which payment we jointly and severally bind ourselves and our legal representatives.

(Date)

(Signed)

The above bounden , having applied to the officer in charge of the Custom-house at for and obtained permission to lodge in a warehouse appointed or licensed under the Inland Bonded Warehouses Act, 1896, and situated at , for a period of months, the following goods, that is to say maunds of salt imported by sea from on board of the ship and entered in the Custom-house books as No. of the Register of goods imported by sea ;

The condition of this bond is that

If the said or their legal representatives shall observe all the rules prescribed under the said Inland Bonded Warehouses Act, 1896, to be observed by the owners of goods warehoused and persons obtaining permission to warehouse goods under the provisions thereof ;

And if the said or their legal representatives shall pay to the officer in charge of the Custom-house at the port of , or to the Collector of , all dues, including customs-duties or other lawful charges, which shall be demandable on the said salt or on account of penalties incurred in respect thereto, within from the date of this bond, together with interest on every such sum at the rate of six per cent. per annum from the date of demand thereof being made in writing by the said officer in charge of the Custom-house ;

And if, within the term so fixed or such further period (if any) as may be granted by the Chief Customs-authority for the payment thereof, the full amount of all customs-duties and other lawful charges, penalties and interest demandable as aforesaid shall have been first paid on the whole of the said salt ;

This obligation shall be void.

Otherwise, and on breach or failure in the performance of any part of this condition, the same shall be in force.

(Date)

(Signed) ().

THE INLAND STEAM-VESSELS ACT, 1917.

(ACT I OF 1917.)

[Passed on the 7th February, 1917.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
For enactments repealed see Schedule II.			
1917	I	The Inland Steam-Vessels.	

An Act to consolidate the enactments relating to Inland Steam-vessels.

WHEREAS it is expedient to consolidate the enactments relating to inland steam-vessels; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called the Inland Steam-vessels Act, 1917.

(2) It extends, in the first instance, to the whole of British India, except the territories administered by the Governor of Fort St. George in Council; and

It shall come into force on such date as the Governor General in Council, by notification in the Gazette of India, may direct.

(3) The Governor of Fort St. George in Council may, at any time, by notification in the Fort St. George Gazette, extend this Act or any part thereof to the whole or any part of the territories under his administration; and the Act or part so extended shall come into force in such territories or part thereof on such date as may be specified in this behalf in such notification.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "inland steam-vessel" means a steam-vessel which ordinarily plies on any inland water :

(2) "inland water" means any canal, river, lake or other navigable water in British India :

(3) "passenger" includes any person carried in a steam-vessel other than the master and crew and the owner, his family and servants :

(4) "prescribed" means prescribed by any rule under this Act :

(5) "steam-vessel" means every description of vessel propelled wholly or in part by the agency of steam :

(6) "survey" means the survey of a steam-vessel under this Act :

(7) "surveyor" means the surveyor appointed under this Act : and

(8) "voyage" includes the plying of a steam-vessel at or about any place.

CHAPTER II.

SURVEY OF INLAND STEAM-VESSELS.

Inland steam-vessel not to proceed on voyage or to be used for service without certificate of survey.

3. (1) An inland steam-vessel shall not proceed on any voyage, or be used for any service, unless she has a certificate of survey in force and applicable to such voyage or service.

(2) Nothing in this section shall apply to any steam-vessel proceeding on a voyage during the interval between the time at which her certificate of survey expires and the time at which it is first practicable to have the certificate renewed.

Appointment of surveyors and places of survey.

4. (1) The Local Government may, by notification in the local official Gazette,—

(a) declare such places, within the territories under its administration, as it thinks fit, to be places of survey, and

(b) appoint so many persons to be surveyors at the said places as it thinks fit, for the purposes of this Act.

(2) Every surveyor shall, for the purposes of any survey made by him, be deemed to be a public servant within the meaning of the Indian

XLV of 1860. Penal Code.

5. (1) For the purposes of a survey, the surveyor may, at any reasonable time, go on board any inland steam-vessel and may inspect the steam-vessel and every part thereof, including the hull, boilers, engines and other machinery and all equipments and articles on board :

Provided that he shall not unnecessarily hinder the loading or unloading of the steam-vessel, or unnecessarily detain or delay her from proceeding on any voyage.

(2) The owner, master and officers of the steam-vessel shall afford to the surveyor all reasonable facilities for a survey, and all such information respecting the steam-vessel, and her machinery or any part thereof, and all equipments and articles on board, as he may require for the purposes of a survey.

6. Before a survey is commenced, the owner or master of the steam-vessel to be surveyed shall pay to such officer as the Local Government may, by notification in the local official Gazette, appoint in this behalf—

Fees in respect of surveys.

(a) a fee calculated on the tonnage of the steam-vessel according to the rates mentioned in Schedule I, or according to any other prescribed rates; and

(b) when the survey is to be made in any place of survey other than Calcutta, Madras, Bombay or Rangoon, such additional fee in respect of the expense (if any) of the journey of the surveyor to the place as the Local Government may by such notification direct.

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Declaration of surveyor. 7. When the survey of a steam-vessel is completed if the surveyor making it is satisfied that—

- (a) the hull, boilers, engines and other machinery of the steam-vessel are sufficient for the voyage or service intended and in good condition, and
- (b) the equipments of the steam-vessel and the certificates of the master and engineer are such and in such condition as are required by any law for the time being in force and applicable to the steam-vessel,

the surveyor shall forthwith give to the owner or master a declaration in the prescribed form containing the particulars mentioned in clauses (a) and (b), and the following further particulars, namely:—

- (i) the time (if less than one year) for which the hull, boilers, engines and other machinery and equipments of the steam-vessel will be sufficient;
- (ii) the limit (if any) beyond which, as regards the hull, boilers, engines and other machinery or equipments, the steam-vessel is in the surveyor's judgment not fit to ply;
- (iii) the number of passengers (if any) which the steam-vessel is, in the judgment of the surveyor, fit to carry, specifying, if necessary, the respective numbers to be carried on the deck and in the cabins, and in different parts of the deck and cabins: the number to be subject to such conditions and variations, according to the time of year, the nature of the voyage, the cargo carried or other circumstances, as the case requires; and
- (iv) any other prescribed particulars.

8. (1) The owner or master of a steam-vessel to whom a declaration is given under section 7 shall, within fourteen days after the date of the receipt thereof, send the declaration to such officer as the Local Government may, by notification in the local official Gazette, appoint in this behalf.

Sending of declaration by owner or master to Local Government.

(2) If any owner or master fails to send a declaration as required by sub-section (1), he shall forfeit a sum not exceeding five rupees for every day during which the sending of the declaration is delayed.

9. (1) The Local Government shall, if satisfied that all the provisions of this Act have been complied with in respect of a declaration sent under section 8, cause,—

Power for Local Government to grant or authorise the grant of certificates of survey.

- (a) a certificate of survey, in duplicate, to be prepared, and
- (b) notice thereof to be given by post or otherwise to the owner or master of the steam-vessel to which the certificate relates.

(2) On application made by the owner or master to such officer at the place of survey as the Local Government may, by notification in the local official Gazette, appoint in this behalf, and on payment to such officer by the owner or master of the sum (if any) forfeited by him under section 8, sub-section (2), (the actual amount of which within the limit

thereby fixed shall be determined by the Local Government), the certificate, in duplicate, so prepared shall be granted to the owner or master by the Local Government and issued to him through such officer.

(3) A certificate granted under this section shall be in the prescribed form, shall contain a statement to the effect that all the provisions of this Act with respect to the survey of the steam-vessel and the declaration of survey have been complied with, and shall set forth—

(a) the particulars concerning the steam-vessel mentioned in the declaration of survey as required by clauses (i), (ii) and (iii) of section 7, and

(b) any other prescribed particulars.

(4) The Local Government may, by notification in the local official Gazette, delegate to any person all or any of the functions assigned to the Local Government under this section :

Provided that no delegation shall be made under sub-section 2 so as to authorise the grant of a certificate of survey by the surveyor who made the declaration of survey under section 7.

10. The owner or master of every steam-vessel, for which a certificate of survey has been granted, shall forthwith, on the receipt of the certificate, cause one of the duplicates thereof to be affixed, and kept affixed so long as it remains in force and the steam-vessel is in use, on some conspicuous part of the steam-vessel where it may be easily read by all persons on board.

Term of certificates of survey. **11.** A certificate of survey shall not be in force—

- (a) after the expiration of one year from the date thereof ; or
- (b) after the expiration of the period (if less than one year) for which the hull, boilers, engines or other machinery, or any of the equipments of the steam-vessel to which the certificate relates have been stated in the certificate to be sufficient ; or
- (c) after notice has been given by any Local Government, to the owner or master of such steam-vessel, that such Local Government has cancelled or suspended it.

12. After a certificate of survey has ceased to be in force, the same shall only be renewed after a fresh survey of the steam-vessel to which the certificate relates, has been held in accordance with the provisions of this Chapter, save so far as any relaxation thereof may be prescribed.

Renewal of certificates of survey. **13.** A certificate of survey may be suspended or cancelled by any Local Government if it has reason to believe—

- (a) that the declaration by the surveyor of the sufficiency and good condition of the hull, boilers, engines or other machinery or of any of the equipments of the steam-vessel has been fraudulently or erroneously made ; or

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- (b) that the certificate has otherwise been granted upon false or erroneous information ; or
- (c) that since the making of the declaration the hull, boilers, engines or other machinery, or any of the equipments of the steam-vessel have sustained any material injury, or have otherwise become insufficient.

Power for Local Government to require delivery of expired or cancelled certificate.

14. The Local Government may require any certificate of survey, which has expired or has been suspended or cancelled, to be delivered up to such officer as the Local Government may, by notification in the local official Gazette, appoint in this behalf.

15. If the Report of suspension or cancellation of certain certificates.

Local Government, which suspends or cancels a certificate of survey, is not the Local Government which (or whose delegate) granted the certificate, the Local Government suspending or cancelling the certificate shall report the fact of suspension or cancellation, together with the reasons therefor, to the Local Government which (or whose delegate) granted the certificate.

16. A survey shall ordinarily be made by one surveyor, but two surveyors may be employed if the Local Government, by order in writing, so directs either generally in the case of all steam-vessels at any place of survey, or specially in the case of any particular steam-vessel or class of steam-vessels at any such place.

Power for Local Government to direct survey by two surveyors.

17. (1) If the surveyor making a survey of a steam-vessel refuses to give a declaration under section 7 with regard to the steam-vessel, or gives a declaration with which the owner or master of the steam-vessel is dissatisfied, the Local Government may, on the application of the owner or master, and the payment by him of such fee, not exceeding twice the amount of the fee payable for the previous survey, as the Local Government may require, direct two other surveyors to survey the steam-vessel.

Power for Local Government to order a second survey.

(2) The surveyors so directed shall forthwith survey the steam-vessel, and may, after the survey, either refuse to give a declaration or give such declaration as, under the circumstances, seems to them proper.

(3) Any declaration given, or any refusal to give a declaration under sub-section (2), shall be final.

18. When a survey is made by two surveyors under either section 16 or section 17, each of the surveyors shall perform the prescribed portion of the duties assigned to a surveyor under this Act or the rules made thereunder.

Division of duties when two surveyors employed.

19. (1) The Local Government may, with the previous sanction of the Governor General in Council, make rules to regulate the making of surveys.

Power for Local Government to make rules as to surveys.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

- (a) the times and places at which, and the manner in which, surveys are to be made ;
- (b) the duties of the surveyor making a survey and, where two surveyors are employed, the respective duties of each such surveyor ;
- (c) the form in which declarations of survey and certificates of survey are to be framed, and the nature of the particulars to be stated therein under sections 7 and 9 ;
- (d) the rates other than those mentioned in Schedule I according to which the fees payable in respect of surveys are to be calculated in the case of all or any of the places of survey within the territories under its administration ; and
- (e) the cases in, and the extent to, which a survey may be dispensed with before the grant of a new certificate.

CHAPTER III.

MASTERS [INCLUDING SERANGS] AND ENGINEERS [INCLUDING ENGINE-DRIVERS] OF INLAND STEAM-VESSELS.

20. The Local Government may appoint examiners for the purpose of examining the qualifications of persons desirous of obtaining certificates (hereinafter called certificates of competency), to the effect that they are competent to act as masters or serangs, or as engineers or engine-drivers, as the case may be, on board inland steam-vessels.

21. (1) The Local Government or such officer as it may, by notification in the local official Gazette, appoint in this behalf, shall grant to every person who is reported by the examiners to possess the prescribed qualifications, a certificate of competency to the effect that he is competent to act as a first-class master, second-class master or serang, or as an engineer, first-class engine-driver or second-class engine-driver, as the case may be, on board an inland steam-vessel :

Provided nevertheless that, before granting a certificate of competency under this Act, the authority empowered to grant such certificate may, if it considers the report of the examiners regarding any applicant for such certificate to be defective, or has reason to believe that such report has been unduly made, require a further examination or a re-examination of the applicant.

(2) Every certificate granted under this section shall be in the prescribed form.

22. (1) The Local Government may, in its discretion, grant without examination to any person who has served as a master, or as an engineer, of an inland steam-vessel before the first day of April 1890, a certificate (hereinafter called a certificate of service) to the effect that he is, by reason of his having so served, competent to act as a first-class master, second-class master or serang, or as

an engineer, first-class engine-driver or second-class engine-driver, as the case may be, on board an inland steam-vessel.

(2) A certificate of service so granted shall have the same effect as a certificate of competency granted under this Act after examination.

23. Every certificate of competency or service granted under this Act shall be made in duplicate, and one copy shall be

Certificates to be made in duplicate.

delivered to the person entitled to the certificate, and the other shall be kept and recorded in the prescribed manner.

24. Whenever a master or serang, or an engineer or engine-driver, proves, to the satisfaction of the authority which

Copy of certificate to be granted in certain cases.

granted his certificate, that he has without fault on his part lost or been deprived of it, a copy of the certificate to which, according to the record kept

under section 23, he appears to be entitled, shall be granted to him, and shall have the same effect as the original.

Certificates to be held by master and engineer of vessel of eighty or more horse-power.

25. An inland steam-vessel having engines of eighty or more nominal horse-power shall not proceed on any voyage unless she has—

- (a) as her master a person possessing a first-class master's certificate granted under this Act, or a master's certificate granted under the Indian Merchant Shipping Act, 1859, or granted I of 1859. under, or continued in force by, the Merchant Shipping Act, 57 & 58 1894, and Vict., c. 60.
- (b) as her engineer a person possessing an engineer's certificate granted under this Act, or the Indian Steamships Act, 1884, VII of 1884. or granted under, or continued in force by, the Merchant 57 & 58 Shipping Act, 1894. Vict., c. 60.

Certificates to be held by master and engineer of vessel of between thirty and eighty horse-power.

26. An inland steam-vessel having engines of thirty or more nominal horse-power, but of less than eighty nominal horse-power, shall not proceed on any voyage unless she has—

- (a) as her master a person possessing a second-class master's certificate granted under this Act, or any certificate referred to in clause (a) of section 25, and
- (b) as her engineer a person possessing a first-class engine-driver's certificate granted under this Act, or an engine-driver's certificate granted under the Indian Steamships Act, 1884, or any VII of 1884. certificate referred to in clause (b) of section 25:

Provided that a steam-vessel shall be deemed to have complied with this section if she has as her master and engineer a person possessing both a certificate referred to in clause (a), and a certificate referred to in clause (b), of this section.

Certificates to be held by master and engineer of vessel of less than thirty horse-power.

27. An inland steam-vessel having engines of less than thirty nominal horse-power shall not proceed on any voyage unless she has—

- (a) as her master a person possessing a serang's certificate granted under this Act, or any certificate referred to in clause (a) of section 26, and
- (b) as her engineer a person possessing a second-class engine-driver's certificate granted under this Act, or any certificate referred to in clause (b) of section 26 :

Provided that a steam-vessel shall be deemed to have complied with this section if she has as her master and engineer a person possessing both a certificate referred to in clause (a), and a certificate referred to in clause (b), of this section.

Power for Local Government to require master or engineer to hold certificate granted under Act in addition to other certificate.

28. Notwithstanding anything in this Chapter, the Local Government may, by general or special order, direct that a person possessing—

- (a) a master's certificate granted under the Indian Merchant Shipping Act, 1859, or granted under, or continued in force by, the Merchant Shipping Act, 1894, or
- (b) an engineer's or engine-driver's certificate granted under the Indian Steamships Act, 1884, or an engineer's certificate granted under, or continued in force by, the Merchant Shipping Act, 1894, shall not act as master or engineer, as the case may be, of an inland steam-vessel unless he also possesses—
 - (i) in case (a), such a master's or serang's certificate granted under this Act as qualifies him under this Chapter to act as master of the steam-vessel, or
 - (ii) in case (b), such an engineer's or engine-driver's certificate granted under this Act as qualifies him under this Chapter to act as engineer of the steam-vessel :

Provided that, for the purposes of this section, the Local Government may, in its discretion, grant to any person, without examination, a master's or serang's or an engineer's or engine-driver's certificate of competency under this Act, and such certificate shall have the same effect as a certificate of competency granted under this Act after examination.

Power for Local Government to make rules as to grant of certificates of competency.

29. (1) The Local Government may, with the previous sanction of the Governor General in Council, make rules to regulate the granting of certificates of competency under this Chapter.

I of 1859.
57 & 58
Vict., c. 60.

VII of 1884.

57 & 58
Vict., c. 60.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

- (a) the times and places of holding and the mode of conducting examination of persons desirous of obtaining certificates of competency ;
- (b) the qualifications to be required of persons desirous of obtaining such certificates ;
- (c) the examination fees to be paid by such persons ; and
- (d) the forms in which such certificates are to be framed, and the authority by whom, and the manner in which, copies are to be kept and recorded under section 23.

Power for Local Government to make rules as to grant of certificates of service.

30. The Local Government may also make rules to regulate the granting of certificates of service under section 22, and may by such rules prescribe in particular—

- (a) the fees to be paid for such certificates. and
- (b) the forms in which such certificates are to be framed, and the authority by whom, and the manner in which, copies are to be kept and recorded under section 23.

Area in which certificates of competency or service shall have effect.

31. Certificates of competency or service granted under this Chapter shall have effect as follows, namely :—

(i) A certificate of competency or service as engineer or engine-driver shall have effect throughout British India.

(ii) A certificate of competency or service as master or serang shall have effect throughout the province in which it was granted :

Provided that the authority granting such certificate may, by endorsement thereon, restrict the effect of such certificate to any part of such province :

Provided further that such certificate may be endorsed by the Local Government of any other province, or with the general or special sanction of the Local Government of such other province, by the authority granting it so as to have effect in such other province or any part thereof, and thereupon shall have effect accordingly.

CHAPTER IV.

INVESTIGATIONS INTO CASUALTIES.

Report of casualties to be made to nearest police-station.

32. Whenever—

- (a) any inland steam-vessel has been wrecked, abandoned or materially damaged, or
- (b) by reason of any casualty happening to, or on board of, any inland steam-vessel, loss of life has ensued, or
- (c) any inland steam-vessel has caused loss or material damage to, any other vessel, the master of the steam-vessel shall forthwith give notice of the wreck, abandonment, damage, casualty, or loss to the officer in charge of the nearest police-station.

Power for Local Government to appoint Court of investigation.

33. (1) If a formal investigation into the facts of any case reported under section 32 appears to the Local Government to be expedient, the Local Government may—

- (a) appoint a special Court and direct the Court to make the investigation at such place as the Local Government may fix in this behalf, or
- (b) direct any principal Court of ordinary criminal jurisdiction or the Court of any District Magistrate to make the investigation.

(2) A special Court appointed under clause (a) of sub-section (1) shall consist of not less than two or more than four persons, of whom one shall be a Magistrate, one shall be a person conversant with maritime affairs or with the navigation of inland steam-vessels, and the other or others (if any) shall be conversant with either maritime or mercantile affairs, or with the navigation of inland steam-vessels.

34. (1) Any Court making an investigation under section 33 may inquire into any charge of incompetency or misconduct arising in the course of the investigation against any master, engineer or engine-driver or any person holding a certificate granted under Chapter III, as well as into any charge of a wrongful act or default on his part causing any wreck, abandonment, damage, casualty, or loss referred to in section 32.

(2) In every case in which any such charge arises against any master, engineer or engine-driver or any person holding a certificate granted under Chapter III in the course of an investigation, the Court shall, before the commencement of the inquiry into the charge, cause to be furnished to him a copy of the report or of any statement of the case upon which the investigation has been directed.

35. (1) If the Local Government has reason to believe that there are grounds for charging any master, engineer or engine-driver, or any person holding a certificate granted under Chapter III, with incompetency or misconduct, otherwise than in the course of an investigation under section 33, it may send a statement of the case to the principal Court of ordinary criminal jurisdiction, or the Court of the District Magistrate, at or nearest to the place at which it may be convenient for the parties and witnesses to attend, and may direct the Court to make an investigation into the charge.

(2) Before commencing an investigation under sub-section (1), the Court shall cause the person charged to be furnished with a copy of the statement of the case sent by the Local Government.

36. For the purpose of an investigation under this Chapter into any charge against a master, engineer or engine-driver, or any person holding a certificate granted under Chapter III, the Court may summon him to appear, and shall give him full opportunity of making a defence, either in person or otherwise.

Power for Local Government to direct investigation otherwise than under section 33.

Person charged to be heard.

37. (1) When, in the opinion of the Court making an investigation under this Chapter, the investigation involves, or appears likely to involve, any question as to the cancelling or suspension of the certificate of a master, engineer or engine-driver, or any person holding a certificate granted under Chapter III, the Court shall appoint as its assessors, for the purposes of the investigation, two persons having experience in the merchant service or in the navigation of inland steam-vessels.

Assessors.

(2) In every other investigation the Court may, if it thinks fit, appoint as its assessor, for the purposes of the investigation, any person conversant with maritime affairs or the navigation of inland steam-vessels and willing to act as assessor.

(3) Every person appointed as an assessor under this section shall attend during the investigation and deliver his opinion in writing, to be recorded on the proceedings.

38. For the purpose of any investigation under this Chapter, the Court making the investigation shall so far as relates to compelling the attendance and examination of witnesses, and the production of documents and the regulation of the proceedings, have—

- (a) if the Court is a special Court—the same powers as are exercisable by the principal Court of ordinary criminal jurisdiction for the place at which the investigation is made ; or
- (b) if the Court is a principal Court of ordinary criminal jurisdiction or the Court of the District Magistrate—the same powers as are exercisable respectively by either Court in the exercise of its criminal jurisdiction.

Powers of Court as to evidence and regulation of proceedings.

39. (1) If any Court making an investigation under this Chapter issues a warrant of arrest to compel the attendance of any person whose evidence is in its opinion necessary, it may, for the purpose of effecting the arrest, but subject to any general or special instructions issued by the Local Government in this behalf, authorise any officer to enter any vessel.

(2) An officer so authorized to enter any vessel may, for the purpose of enforcing the entry, call to his aid any officers of Police or Customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest ; and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code.

(3) No person shall be detained under this section for more than forty-eight hours.

XLV of 1860.

40. Whenever, in the course of an investigation under this Chapter, it appears to the Court making the investigation that any person has committed, within British India, an offence punishable under any law in force in British India, the Court making the investigation may (subject to such rules consistent with this Act as the High Court may, from time to time, make in this behalf)---

Power of Court to commit for trial and to bind over witnesses.

- (a) cause such person to be arrested ;

- (b) commit him or hold him to bail to take his trial before the proper Court;
- (c) bind over any other person to give evidence at such trial; and
- (d) exercise, for the purposes of this section, all the powers of a Magistrate of the first-class or of a Presidency Magistrate.

41. (1) Whenever, in the course of a trial referred to in section 40, the evidence of any witness is required in relation to the subject-matter, any deposition previously made by him in relation to the same subject-matter before any Court making an investigation under this Chapter shall, if authenticated by the signature of the Magistrate or presiding Judge of such Court, be admissible in evidence on proof—

- (a) that the witness cannot be found within the jurisdiction of the Court before which the trial is held; and
- (b) that the deposition was made in the presence of the person accused, and that he had an opportunity of cross-examining the witness.

(2) A certificate signed by such Magistrate or presiding Judge that the deposition was made in the presence of the accused, and that he had an opportunity of cross-examining the witness shall, unless the contrary be proved, be sufficient evidence that it was so made and that the accused had such opportunity.

42. The Court shall, in the case of every investigation under this Chapter, transmit to the Local Government a full report of the conclusions at which it has arrived, together with the evidence recorded and the written opinion of any assessor.

Report by Court to Local Government.

43. Notwithstanding the appointment under section 37 of an assessor or assessors by a Court making an investigation under this Chapter, the exercise of all powers conferred on such Court by this Act shall rest with the Court alone.

Court to exercise its powers independently of the assessors.

44. (1) Whenever any explosion occurs on board any inland steam-vessel, the Local Government may direct that an investigation into the cause of the explosion be made by such person or persons as it may appoint in this behalf.

Power for Local Government to direct investigations into causes of explosions on steam-vessels.

(2) The person or persons so appointed may, for the purpose of the investigation, enter into and upon the steam-vessel, with all necessary workmen and labourers, and remove any portion of the steam-vessel or of the machinery thereof, and shall report to the Local Government what, in his or their opinion, was the cause of the explosion.

(3) Every person making an investigation under this section shall be deemed to be a public servant within the meaning of the Indian Penal Code.

CHAPTER V.

**SUSPENSION AND CANCELLATION OF CERTIFICATES
GRANTED UNDER THE ACT.**

Power for Local Government to suspend or cancel certificates in certain cases.

45. Any certificate granted under Chapter III may be suspended or cancelled by the Local Government by which, or under authority from which, it was granted or by any other Local Government in the following cases, namely :—

- (a) if, on any investigation made under this Act, the Court reports that the wreck or abandonment of, or loss or damage to, any vessel, or loss of life has been caused by the wrongful act or default of the holder of such certificate, or that the holder of such certificate is incompetent or has been guilty of any gross act of drunkenness, tyranny or other misconduct, or
- (b) the holder of such certificate is proved to have been convicted of any non-bailable offence, or
- (c) if, in the case of a person holding a certificate of competency or service as second-class master or serang, or as engine-driver, such person is, or has become, in the opinion of the Local Government, unfit to act as a second-class master or serang or as an engine-driver, as the case may be :

Provided that a certificate shall not be suspended or cancelled under clause (a), unless the Local Government is satisfied that the holder of the certificate has, before the commencement of the investigation, been furnished with a copy of the report or statement of the case as required by section 34 or section 35, as the case may be.

Obligation to deliver up suspended or cancelled certificate.

46. Every person whose certificate is suspended or cancelled under this Chapter shall deliver it up to such person as the Local Government which suspended or cancelled it may direct.

47. If the Local Government which suspends or cancels a certificate under this Chapter is not the Local Government

Report to other Local Government.

by which, or under authority from which, such certificate was granted, the Local Government so suspending or cancelling the certificate shall report the proceedings, and the fact of suspension or cancellation to the Local Government by which, or under authority from which, such certificate was granted.

Power for Local Government to revoke suspension or cancellation, and to grant new certificate.

48. (1) Any Local Government may, at any time, revoke any order of suspension or cancellation which it may have made under this Chapter, or grant without examination, to any person whose certificate it has so cancelled, a new certificate.

(2) A certificate so granted shall have the same effect as a certificate of competency granted under this Act after examination.

CHAPTER VI.

PROTECTION OF, AND CARRIAGE OF PASSENGERS IN, INLAND STEAM-VESSELS.

Power for
Governor General in
Council to declare
dangerous goods.

49. The Governor General in Council may by notification in the Gazette of India, declare what shall, for the purposes of this Act, be deemed to be dangerous goods.

Carriage of
dangerous goods.

50. (1) No person shall—

- (a) take with him on board an inland steam-vessel any dangerous goods without giving notice of their nature to the owner or master of the steam-vessel, or
- (b) deliver or tender for carriage on such steam-vessel any dangerous goods without giving such notice, and without distinctly marking their nature on the outside of the package containing the goods.

(2) If the owner or master of an inland steam-vessel suspects, or has reason to believe, that any luggage or parcel taken, delivered, or tendered for carriage on the steam-vessel contains dangerous goods, he may—

- (i) refuse to carry it upon the steam-vessel ; or
- (ii) require it to be opened to ascertain the nature of its contents ; or
- (iii) if it has been received for carriage, stop its transit until he is satisfied as to the nature of its contents.

51. Where any dangerous goods have been taken or delivered on board any inland steam-vessel in contravention of section 50, the owner or master of the steam-vessel may, if he thinks fit, cause the goods to be thrown overboard, together with any package or receptacle in which they are contained, and neither the owner nor the master shall, in respect of his having so caused

Power of owner or
master of steam-
vessel to throw over-
board dangerous
goods.

the goods to be thrown overboard, be subject to any liability, civil or criminal, in any Court.

Power for Local
Government to
make rules for pro-
tection of inland
steam-vessels from
accidents.

52. (1) The Local Government may make rules for the protection of inland steam-vessels against explosion, fire, collision and other accidents.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the conditions on and subject to which dangerous goods may be carried on board inland steam-vessels ;
- (b) prescribe precautions to be taken to prevent explosions or fires on board inland steam-vessels ;
- (c) prescribe the apparatus which is to be kept on board inland steam-vessels, for the purpose of extinguishing fires ;

- (d) regulate the making of sound signals ;
- (e) regulate the carriage and exhibition of lights by inland steam-vessels ;
- (f) regulate the carriage and exhibition of lights by other vessels on specified inland waters on which steam-vessels ply ;
- (g) prescribe the steering rules to be observed ;
- (h) regulate the towing of vessels astern or alongside ;
- (i) prescribe the speed at which inland steam-vessels may be navigated in specified areas ; and
- (j) regulate the navigation of inland steam-vessels to prevent danger to other vessels, or to the banks, channels, navigation marks or any property, moveable or immoveable, in or abutting on navigable channels.

(3) Any rule made under this section may contain a provision that any person committing a breach of it shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Power for Local Government to make rules as to carriage of passengers in inland steam-vessels.

53. (1) The Local Government may make rules to regulate the carriage of passengers in inland steam-vessels.

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

- (a) prescribe the cases in which passengers may be refused admission to, or may be required to leave, inland steam-vessels ;
- (b) provide for the payment of fares, and the exhibition of tickets or receipts (if any) showing the payment of their fares, by passengers in inland steam-vessels ; and
- (c) regulate generally the conduct of passengers in inland steam-vessels.

(3) Any rule made under this section may contain a provision that any person committing a breach of it shall be punishable with fine which may extend to twenty rupees.

(4) The master or any other officer of an inland steam-vessel, and any person called by him to his assistance, may arrest any person who has committed a breach of any rule made under this section, if the name and address of such person are unknown to the master or such other officer.

(5) The procedure prescribed by section 59 of the Code of Criminal Procedure, 1898, in the case of arrest by private persons shall apply to every arrest made under this section.

Power for Local Government to make rules for protection of passengers.

54. (1) The Local Government may also make rules for the protection of passengers in inland steam-vessels, and may by such rules require—

- (a) the prices of passenger-tickets to be printed or otherwise denoted on such tickets ; and

(b) the supply, free of charge of a sufficient quantity of fresh water for the use of such passengers.

(2) Any rule made under this section may contain a provision that any person committing a breach of it shall be punishable with fine which may extend to fifty rupees.

CHAPTER VII.

PENALTIES AND LEGAL PROCEEDINGS.

55. (1) If any inland steam-vessel proceeds on a voyage in contravention of section 3, the owner and the master of the steam-vessel shall each be punishable with fine, which may extend to one thousand rupees.

Penalty for making voyage without certificate of survey.

(2) If the master or any other officer on board an inland steam-vessel which proceeds on a voyage in contravention of section 3 is a licensed pilot, he shall be liable to have his license as a pilot suspended or cancelled, for any period, by the Local Government.

Penalty for neglect to affix certificate of survey in inland steam-vessel.

56. If the certificate of survey is not kept affixed in an inland steam-vessel as required by section 10, the owner and the master of the steam-vessel shall each be punishable with fine which may extend to one hundred rupees.

Penalty for neglect or refusal to deliver up certificate of survey.

57. If the owner or master of an inland steam-vessel, without reasonable cause, neglects or refuses to deliver up a certificate of survey when required under section 14 so to do, he shall be punishable with fine which may extend to one hundred rupees.

58. If an inland steam-vessel has on board or in any part thereof a number of passengers which is greater than the number set forth in the certificate of survey as the number of passengers which the vessel or the part thereof is, in the judgment of the surveyor, fit to carry, the owner and the master shall each be punishable with fine which may extend to ten rupees for every passenger over and above that number.

Penalty for serving or engaging a person, to serve, as master or engineer without certificate.

59. If any person—

(a) proceeds on any voyage in an inland steam-vessel as the master or engineer of such vessel without being at the time entitled to, and possessed of, a master's or serang's or an engineer's or engine-driver's certificate, as the case may be, as required under this Act, or

(b) employs as the master or engineer of an inland steam-vessel any person without ascertaining that he is at the time entitled to, and possessed of, such certificate,

he shall be punishable with fine which may extend to five hundred rupees.

60. If any master wilfully fails to give notice, as required by section 32, of any wreck, abandonment, damage, casualty, or loss, he shall be punishable with fine which may extend to five hundred rupees, and, in default of payment of such fine, with simple imprisonment for a term which may extend to three months.

Penalty for master failing to give notice of wreck or casualty.

Penalty for failing to deliver up suspended or cancelled certificate.

61. If any person, whose certificate is suspended or cancelled under this Act, fails to deliver up the certificate as required by section 46, he shall be punishable with fine, which may extend to five hundred rupees.

Penalty for taking or delivering or tendering for carriage dangerous goods on board inland steam-vessel without notice.

62. If any person, in contravention of section 50, takes with him on board any inland steam-vessel any dangerous goods, or delivers or tenders any such goods for carriage on any inland steam-vessel, he shall be punishable with fine which may extend to two hundred rupees, and the goods shall be forfeited to Government.

Penalty for misconduct or neglect endangering inland steam-vessel or life or limb.

63. If any person employed or engaged in any capacity on board an inland steam-vessel, by wilful breach or by neglect of duty, or by reason of drunkenness—

- (a) does any act tending immediately to wreck, destroy or materially damage the vessel, or to endanger the life or limb of any person on board, or belonging to the vessel, or
- (b) refuses or omits to do any lawful act proper and requisite to be done by him for preserving the vessel from immediate wreck, destruction or material damage, or for preserving any such person from immediate danger to life or limb,

he shall be punishable with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to two years, or with both.

64. Where the owner or master of an inland steam-vessel is convicted of an offence under this Act or any rule made thereunder committed on board, or in relation to, that steam-vessel, and is sentenced to pay a fine, the Magistrate who passes the sentence may direct the amount of the fine to be levied by distress and sale of the steam-vessel and the tackle, apparel and furniture thereof, or so much thereof as is necessary.

Levy of fine by distress of inland steam-vessel.

65. Except in the case of an offence against any rule made under section 53, no Magistrate shall try an offence under this Act, or any rule made thereunder, unless he is a Presidency Magistrate, or a Magistrate whose powers are not less than those of a Magistrate of the first class.

Jurisdiction of Magistrates.

66. If any person commits an offence against this Act or any rule made thereunder, he shall be triable for the offence in any place in which he may be found or which the Local Government, by notification in the local official Gazette, appoints in this behalf, or in any other place in which he might be tried under any other enactment for the time being in force.

CHAPTER VIII.

SUPPLEMENTAL.

67. (1) The Local Government may make rules to carry out the purposes of this Act not otherwise specially provided for.

(2) Any rule made under this section may contain a provision that any person committing a breach of it shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both.

68. The Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, declare that all or any of the provisions of Chapters II and III shall not apply in the case of any specified class of steam-vessels, or shall apply to them with such modifications as may be specified in the notification.

69. Save in so far as the Governor General in Council may, by notification in the Gazette of India otherwise direct, nothing in this Act, or any rule made thereunder, shall apply to any inland steam-vessel belonging to, or in the service of, His Majesty or the Government of India.

70. The Local Government may, by notification in the local official Gazette, define how much of any tidal water shall be deemed to be an inland water for the purposes of this Act.

71. All fees payable under this Act may be recovered as fines under this Act.

72. (1) Subject to the provisions of section 31 every master of an inland steam-vessel who possesses a master's certificate granted under this Act and in force shall, in ports to which section 31 of the Indian Ports Act, 1908, has been extended, be deemed, for the purposes of that section, to be the pilot of the steam-vessel of which he is in charge.

(2) Nothing in this section shall be deemed to affect the provisions of Bombay Act I of 1863 (*An Act for the registry of vessels and levy of pilotage fees on the river Indus*), which require persons in charge of vessels passing through any of the channels or tidal channels at the mouths of the river Indus to pay fee for pilotage.

Sch. II ACT I OF 1917 (INLAND STEAM-VESSELS). **Inland Steam**

Application of Act to vessels propelled by electricity or other mechanical power.

73. The provisions of this Act shall also apply to all vessels which ordinarily ply on inland waters and are propelled by electricity or other mechanical power except steam :

Provided that the Governor General in Council may, by notification in the Gazette of India, declare that any provision of this Act shall in its application under this section to such vessels be subject to such modifications, for the purposes of adaptation, as may be specified in the notification.

Publication of rules. 74. (1) The power to make rules conferred on a Local Government by this Act is subject to the condition of the rules being made after previous publication.

(2) All such rules shall, when made, be published in the local official Gazette, and shall thereupon have effect as if enacted in this Act.

Repeals and savings. 75. The enactments mentioned in Schedule II are repealed to the extent specified in the fourth column thereof :

Provided that all declarations, investigations and surveys made and certificates granted, suspended or cancelled under any of those enactments shall be deemed to have been respectively, made, granted, suspended or cancelled under this Act.

SCHEDULE I.

RATES OF FEES.

[See section 6 (a) and 19 (d).]

			Tons.	Rs.
For steam vessels of less than	...	...	100	25
" 100 tons and up to	...	...	200	40
" 200 "	...	...	350	50
" 350 "	...	...	700	60
" 700 "	...	...	1,000	80
" 1,000 "	...	...	1,500	100
" 1,500 " and upwards...	...	...	...	120

SCHEDULE II.

ENACTMENTS REPEALED.

[See section 75.]

Year.	No.	Short title.	Extent of repeal.
1884	VI	The Inland Steam-vessels Act, 1884.	So much as is unrepealed.
1890	III	The Indian Steamships Law Amendment Act, 1890.	In the title the figures and word "VI and". In the preamble the words and figures "the Inland Steam-vessels Act, 1884, and". The heading " <i>Inland Steam-vessels Act, 1884</i> " before section 1. Sections 1, 2, 4 (so much as is unrepealed), 6, 7, 8, 12, 13 and 14.

Judicial Officers' Act XVIII OF 1850 (JUD. OFF. PROTECTION). S. 1

SCHEDULE II—(Concluded).

Year.	No.	Short title.	Extent of repeal.
1891	XII	The Amending Act, 1891 ...	In the Second Schedule, Part I, the entries relating to Act VI of 1884, and Act III of 1890.
1891	XIII	The Inland Steam-vessels Act (1884) Amendment Act, 1891.	So much as is unrepealed.
1897	XIV	The Indian Short Titles Act, 1897.	In the Schedule, the entry relating to Act XIII of 1891.
1899	VII	The Inland Steam-vessels Act (1884) Amendment Act, 1899.	So much as is unrepealed.
1900	VI	The Lower Burma Courts Act, 1900.	In the Second Schedule, the entry relating to Act VI of 1884.
1909	I	The Indian Steamships Law Amendment Act, 1909.	In the title and the preamble the words "the Inland Steam-vessels Act, 1884, and". The heading " <i>The Inland Steam-vessels Act, 1884</i> " before section 2, and section 2.
1914	X	The Repealing and Amending Act, 1914.	In the Second Schedule, the entries relating to Act XIII of 1891, and Act VII of 1899.
1915	XV	The Inland Steam-vessels Amendment Act, 1915.	The whole Act.

THE JUDICIAL OFFICERS' PROTECTION ACT, 1850.
(ACT XVIII OF 1850.)

[Passed on the 4th April, 1850.]

An Act (a) for the protection (b) of Judicial Officers (c).

Preamble. FOR the greater protection of Magistrates and others acting judicially; It is enacted as follows :—

Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders. 1. No Judge, Magistrate, Justice of the Peace, Collector or other person (d) acting judicially (e) shall be liable to be sued (f) in any Civil Court, for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction (g): provided

Case-law :—(a) Scope of Act, 12 A. 115; 30 B. 241=7 Bom. L.R. 951; Act does not apply to Governor-in-Council, 7 M. 466, F.B. (b) Protection rests on public policy, 30 B. 241; L.B.R. (1872—1892) 83; extent of protection, same as under English Law, 2 M.I.A. 293. (c) But not of the Police or Magistrates in exercise of Police duties, 9 O. 341, P.C.; Secretary of State not liable for official acts of Judicial Officers, 59 P.W.R. 1908. (d) *E.g.*, Municipal Commissioner acting as Magistrate under Bengal Act III of 1864, 18 W.R. 340. (e) Judicial Act, test of, 39 M. 1164; Magistrate acts judicially in making house search in view of enquiry under Crim. Pro. Code, 16 O.W.N. 865, P.C.; similarly acceptance or refusal of bail is a judicial act, 2 M. H.O. 396; whether a Magistrate's order demanding security under Press Act (I of 1910) is a judicial act, 39 M. 1164. (f) Conditions necessary for protection, 30 B. 264; Act does not affect Court's discretion as to costs under S. 220, Civ. Pro. Code, 1862 (=S. 35 of Act V of 1908), 4 Bom. L.R. 109. (g) Meaning of, 12 A. 115; how determined, 30 B. 241=7 Bom. L.R. 951.

S. 1 ACT I OF 1894 (LAND ACQUISITION). Land Acquisition

that he at the time, in good faith (a), believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.

THE LAND ACQUISITION ACT, 1894.

(ACT I OF 1894.)

[Passed on the 2nd February, 1894.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1852	XX	Acquisition of land for public purposes (Madras).	Rep., Act VI of 1857.
1854	I	Acquisition of Land, Madras Town.	" "
1857	VI	Acquisition of land for public purposes.	" Act X of 1870.
1863	XXII	Acquisition of land for certain works of public utility.	" "
1870	X	Land Acquisition ...	" Act I of 1894.
1894	XVIII	Punjab Courts ...	" in pt., Act I of 1894.
1894	I	Land Acquisition ...	" in pt. and am., Acts IV and X of 1914.

An Act to amend the law for the acquisition of land for public purposes and for Companies.

WHEREAS it is expedient to amend the law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called the Land Acquisition Act, 1894;

(2) It extends to the whole of British India; and

(3) It shall come into force on the first day of March, 1894.

Case-law :—(a) See 6 M.H.C. 423; 10 M.L.J. 232; 9 Ind. Cas. 535; acts *ultra vires* not done in good faith, not protected, 1 M. 89, F.B.; 2 M.H.C. 448; mere absence of *mala fides* is not good faith, 13 W.R. 13; there is no good faith where the act is not done reasonably, carefully and circumspectly, *ibid*; 3 B.H.C. (A.C.) 36; 3 B.H.C. Ap. 1; no question of good faith if act is within jurisdiction, 1 A. 280; 12 A. 115.

Repeal.

2. [1] (1) * * *

(2) [1] * all proceedings commenced, officers appointed or authorized, agreements published and rules made under the [2] Land Acquisition Act, 1870, [2] shall, as far as may be, be deemed to have been respectively commenced, appointed or authorized, published and made under this Act.

(3) Any enactment or document referring to the [2] Land Acquisition Act, 1870, [2] or to any enactment thereby repealed shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

- (a) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth :
- (b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act ; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land .
- (c) the expression "Collector" (a) means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the Local Government to perform the functions of a Collector under this Act :
- (d) the expression "Court" (b) means a principal Civil Court of original jurisdiction, unless the Local Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act :
- (e) the expression "Company" means a Company registered under the Indian Companies Act, 1882, or under the (English) Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament or of the Governor General in Council, or by Royal Charter or Letters Patent :
- (f) the expression "public purpose" includes the provision of village-sites in districts in which the Local Government shall have declared by notification in the official Gazette that it is customary for the Government to make such provision : and
- (g) the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided (that is to say)—
trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case,

VI of 1882.

Leg. Changes :—[1] Repealed by Act X of 1914. [2] Substituted by Act X of 1914.

Case-law :—(a) Is not a Court, and enquiry by him is not a judicial proceeding, 27 C. 820 ; 30 C. 36 ; 32 C. 605 ; —not competent to administer oath or require verification, 27 C. 820. (b) Does not include Collector holding inquiry under the Act, 27 C. 820 ; 30 C. 36.

and that to the same extent as the persons beneficially interested could have acted if free from disability :

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and whether of full age or not, to the same extent as if she were unmarried and of full age ; and

, the guardians of minors and the committees or managers of lunatics or idiots ;

shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted :

Provided that—

- (i) no person shall be deemed " entitled to act " whose interest in the subject-matter shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act ;
- (ii) in every such case the person interested may appear by a next friend or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof ;
- (iii) the provisions of Chapter XXXI of the Code of Civil Procedure shall, *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act ; and XIV of 1882.
- (iv) no person " entitled to act " shall be competent to receive the compensation-money payable to the person for whom he is entitled to act unless he would have been competent to alienate the land and receive and give a good discharge for the purchase-money on a voluntary sale.

PART II.

ACQUISITION.

Preliminary Investigation.

4. (1) Whenever it appears to the Local Government that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen,—

to enter upon and survey and take levels of any land in such locality ; to dig or bore into the subsoil ;

to do all other acts necessary to ascertain whether the land is adapted for such purpose ;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon ;

to mark such levels, boundaries and line by placing marks and cutting trenches ; and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle :

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

* * * *

Declaration of Intended Acquisition.

6. (1) Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders :

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be ; and, after making such declaration, the Local Government may acquire the land in manner hereinafter appearing.

7. Whenever any land shall have been so declared to be needed for a public purpose or for a Company, the Local Government, or some officer authorized by the Local Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

After declaration
Collector to take
order for acquisition.

8. The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and if no plan has been made thereof, a plan to be made of the same.

Land to be marked
out, measured and
planned.

9. (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested (a) in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue-district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866.

XIV of 1866.

10. (1) The Collector (b) may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound (c) to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

XLV of 1860.

* * * *

PART VIII.

MISCELLANEOUS.

45. (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

Case-law :—(a) Includes one who has entered into agreement to purchase the land, 18 P.R. 1917—28 P.W.R. 1917. (b) Cannot administer oath or require verification of petition, 27 O. 890. (c) But shall not be prosecuted for false information before final decision of Civil Court, 27 O. 985.

Land Acq. (Mines) ACT XVIII OF 1885 [LAND ACQ. (MINES)]. §. 1

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired :

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under XIV of 1866. Part III of the Indian Post Office Act, 1866, and service of it may be proved by the production of the addressee's receipt.

46. Whoever wilfully obstructs any person in doing any of the acts authorized by section 4 or section 8, or wilfully fills up, destroys, damages or displaces any trench or mark made under section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

Penalty for obstructing acquisition of land.

47. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

Magistrate to enforce surrender.

* * *

THE LAND ACQUISITION (MINES) ACT, 1885.

(ACT XVIII OF 1885.)

[Passed on the 16th October, 1885.]

An Act to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870.

WHEREAS it is expedient to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870; It is hereby enacted as follows :

X of 1870.

Short title, commencement and local extent.

1. (1) This Act may be called the Land Acquisition (Mines) Act, 1885; and

S. 17 ACT XVIII OF 1885 [LAND ACQ. (MINES)]. Land Acq. (Mines)

(2) It shall come into force at once.

(3) It extends in the first instance to the territories administered by the Governor of Madras in Council and the Lieutenant-Governor of Bengal; but any other Local Government may, from time to time, by notification in the official Gazette, extend this Act to the whole or any specified part of the territories under its administration.

* * * * *

11. For better ascertaining whether any mines lying under land acquired in accordance with the provisions of this Act

Power to officer of Local Government to enter and inspect the working of mines.

are being worked, or have been worked, or are likely to be worked so as to damage the land or the works thereon, an officer appointed for this purpose by the Local Government may, after giving twenty-four hours' notice in writing, enter into and return from

any such mines or the works connected therewith; and for that purpose the officer so appointed may make use of any apparatus or machinery belonging to the owner, lessee or occupier of the mines, and use all necessary means for discovering the distance from any part of the land acquired to the parts of the mines which have been, are being or are about to be worked.

12. If any owner, lessee or occupier of any such mines or works refuses to allow any officer appointed by the Local

Penalty for refusal to allow inspection.

Government for that purpose to enter into and inspect any such mines or works in manner aforesaid, he shall

be punished with fine which may extend to two hundred rupees.

* * * * *

This Act to be read with Land Acquisition Act, 1870.

17. This Act shall, for the purposes of all enactments for the time being in force, be read with and taken as part of the Land Acquisition Act, 1870.

THE LAWS LOCAL EXTENT ACT, 1874.

(ACT XV OF 1874.)

[Passed on the 8th December, 1874.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1874	XY	Laws Local Extent.	<p>Rep. in part— Act VIII of 1875 ; Act XII of 1876 ; Act XVIII of 1877 ; Act VI of 1878 ; Act XI of 1878 ; Act XIX of 1879 ; Act XIV of 1881, S. 14 ; Act XXVI of 1881 ; Act X of 1882 ; Act VIII of 1883 ; Act VII of 1885 ; Act VIII of 1887 ; Act IX of 1887 ; Act VII of 1889 ; Act XIII of 1889 ; Act VIII of 1890 ; Act XX of 1890, S. 8 (1) ; Act IV of 1894 ; Act IX of 1894 ; Act XI of 1901, S. 3 ; Act I of 1903. Rep. in part and amended— Act XIV of 1881, S. 15 ; Act XII of 1891.</p>

*An Act for declaring the local extent of certain Enactments,
and for other purposes.*

WHEREAS it is expedient to declare the local extent of certain Acts
Preamble. passed by the Governor General of India in Council,
the Legislative Council of India, and the Council of the
Governor General of India assembled for the purpose of making Laws and
Regulations ;

And whereas it is also expedient to consolidate the laws relating to
the local extent of certain Acts and Regulations in the Presidencies of
Fort St. George and Bombay, and in the Lower and the North-Western
Provinces of the Presidency of Fort William in Bengal ;

It is hereby declared and enacted as follows :—

Short title. 1. This Act may be called the Laws Local
Extent Act, 1874.

Interpretation-
clause. 2. In this Act the expression " Scheduled Dis-
tricts " means the territories mentioned in the sixth
schedule hereto annexed.

S. 8 ACT XV OF 1874 (LAWS LOCAL EXTENT). Laws Local Ext.

Local extent of Acts in first schedule. 3. The Acts mentioned in the first schedule hereto annexed are now in force throughout the whole of British India, except the Scheduled Districts^(a).

Local extent of enactments in second schedule. 4. The enactments mentioned in the second schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Governor of Fort St. George in Council, except the Scheduled Districts subject to such government.

Local extent of enactments in third schedule. 5. The enactments mentioned in the third schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Governor of Bombay in Council, except the Scheduled Districts subject to such government.

Local extent of enactments in fourth schedule. 6. The enactments mentioned in the fourth schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Lieutenant-Governor of Bengal, except the Scheduled Districts subject to such government.

Local extent of enactments in fifth schedule. 7. The enactments mentioned in the fifth schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William, except the Scheduled Districts subject to such government.

Savings.

8. Nothing herein contained shall—

- (a) bar the power of the Governor General in Council or the Local Government, under any law for the time being in force, to extend to any place any Act mentioned in the said first schedule ;
- (b) extend any Act empowering the Local Government to extend the same or any part thereof, or affect in any manner the exercise of such power ;
- (c) affect the operation of any Act or Regulation heretofore extended to or declared to be in force in any of the Scheduled Districts ;
- (d) revive any enactment which has been repealed either generally or with reference to some special subject ;
- (e) [Repealed by Act VIII of 1887] ;
- (f) [Rep. by the Repealing and Amending Act, 1891 (XII of 1891)] ;
- (g) [Rep. by the Guardians and Wards Act, 1890 (VIII of 1890)] ;
- (h) [Repealed by Act VIII of 1887] ;
- (i) [Rep. by the Repealing and Amending Act, 1894 (IV of 1894)] ;
- (j) extend to any of the Towns of Calcutta, Madras and Bombay any law not now in force therein ;

Case-law :—(a) See 13 M. 353 (355).

[1](j) extend to Pargana Bhadohi or Pargana Kera Mangror in the Mirzapur District, or to Pargana Kaswa Raja in the Benares District, any law not now force therein;

(k) affect the operation of any enactment not mentioned in any of the schedules hereto annexed.

9. [Enactments repealed.] Rep. by the Repealing Act, 1876 (XII of 1876).

FIRST SCHEDULE [2].

(See section 3.)

, ACTS OF THE SUPREME COUNCIL.

Year and Number.	Subject.
1836, [3] XXVI	... Governor-General's Camp Police.
1837, IV	... Power to acquire land.
1838, XXV	... Wills executed before the 1st January, 1866.
1839, XXIX	... Dower, when marriage was contracted before 1st January, 1866.
1839, XXX	... Inheritance, where descent took place before 1st January, 1866.
1839, XXXII	... Interest.
1841, X	... Registration of ships.
1841, XIX	... Curators in cases of successions.
1843, V	... Slavery.
1847, XX	... Copyright.
1850, V	... Coasting Trade.
1850, XI	... Navigation Laws.
1850, XII	... Default of Public Accountants.
1850, XVIII	... Protection of Judicial Officers.
1850, XIX	... Binding of Apprentices.
1850, XXI	... Non-forfeiture of rights by loss of Caste.
1850, XXXIV	... State Prisoners.
1850, XXXVII	... Inquiries into the behaviour of public servants.
1852, XXX	... Naturalization of Aliens.
1853, II	... Burdens on land.
1854, XXXI	... Barring entails: Conveyances by married women.
1855, XI	... Mesne profits and improvements.
1855, XII	... Executors and Administrators.
1855, XIII	... Compensation for loss occasioned by death caused by actionable wrong.

Leg. Changes:—[1] Inserted by Act XIV of 1881, S. 15. [2] Act XV of 1874 having been repealed, so far as it relates to certain enactments, by later Acts, the references to those enactments have been omitted from this schedule. [3] Act XXVI of 1886 was repealed by Act XII of 1891.

2nd Sch. ACT XV OF 1874 (LAWS LOCAL EXTENT). Laws Local Ext.

ACTS OF THE SUPREME COUNCIL—(Concluded).

Year and Number.		Subject.
1855,	XXIII	... Administration of mortgaged estates in cases of descents occurring or devises made before the 1st January, 1866.
1855,	XXIV	... Penal servitude.
1855,	XXVIII	... Interest.
1856,	IX	... Bills of lading.
1856,	XI	... Desertion by European Soldiers.
1856,	XV	... Marriage of Hindu Widows.
1857,	XI	... Offences against the State.
1857,	XXV	... Forfeiture by Mutineers.
1858,	III	... State Prisoners.
1858,	XXXV	... Estates of Lunatics not subject to jurisdiction of Supreme Courts.
1858,	XXXVI	... Lunatic Asylums.
1859,	I	... Merchant Seamen.
1859,	IX	... Sections 16, 17, 18 and 20—Forfeitures.
1860,	XXI	... Registration of Societies.
1862,	III	... Government Seal.
1863,	XVI	... Excise Duty payable on Spirits used in Arts and Manufactures.
1863,	XXIII	... Claims to waste-lands.
1863,	XXXI	... Gazette of India.
1864,	III	... Foreigners.
1864,	VI	... Whipping.
1865,	III	... Common Carriers.
1865,	XV	... Marriage and Divorce among Parsis.
1865,	XXI	... Intestate succession among Parsis.
1866,	V	... Bills of Exchange, Commercial Law.
1866,	XXI	... Dissolution of Marriages of Native Converts.
1866,	XXVIII	... Trustees and Mortgagees' Powers.
1867,	XXV	... Printing Presses, etc.
1869,	XV	... Evidence of Prisoners.
1870	I	... Quarantine.

SECOND SCHEDULE.

(See section 4.)

(a).—MADRAS REGULATIONS.

Year and Number.		Subject.
1802,	III (s. 1, part of s. 16 only).	Procedure of Civil Courts.
1802,	V (s. 30)	... Sadr Adalat to act according to justice, etc.

Laws Local Ext. ACT XV OF 1874 (LAWS LOCAL EXTENT). 2nd Sch.

(a).—MADRAS REGULATIONS—(Concluded).

Year and Number.			Subject.
1802,	XIII	...	Records of Courts.
1802,	XIX (s. 2)	...	Covenanted Civil Servants forbidden to lend.
1802,	XXV	...	Settlement of Land-revenue.
1802,	XXVI (ss. 1, 2 & 3 only).	...	Registration of malguzari land.
1802,	XXIX	...	Karnams.
1803,	I	...	Board of Revenue.
1803,	II	...	Conduct of Collectors, etc.
1804,	V	...	Court of Wards.
1806,	II (s. 7, cl. second)	...	Collectors and Karnams.
1808,	VII	...	Martial Law.
1816,	V	...	Village Panchayats.
1816,	XI	...	Sections 8, 9, 10—Heads of villages : Section 11, cl. 1—Stolen property : Section 13—Discovery of corpses : Section 14—Register of persons confined by heads of villages : and Section 47—Magistrates charged with maintenance of peace.
1816,	XII	...	Reference of claims regarding land and pro- duce to Village and District Panchayats.
1817,	VII	...	Maintenance of Bridges, etc.; Escheats.
1817,	VIII (s. 9 only)	...	Sale for arrears of revenue of estate belong- ing to Native Officer or Soldier.
1819,	II	...	State Prisoners.
1822,	IV	...	Explanation of Madras Regulation XXV, 1802.
1822,	VII (cl. 1 of s. 3 only)	...	Native Officers in Revenue and other Public Departments.
1822,	IX	}	Embezzlement by public servants and malversation in revenue matters.
1823,	III		
1828,	VII	...	Powers of Subordinate and Assistant Collectors.
1829,	V	...	Hindu Wills and Estates.
1830,	I	...	Prohibition of Widow-burning.
1831,	V (s. 7, cl. 2 only)	...	Liability of Ministerial Officers for reception of improperly stamped document.
1831,	VI	...	Hereditary Village Offices.
1831,	X	...	Prohibition of Sale of Estates of Minors for Arrears of Revenue.
1832,	III	...	Limitation for Suits against orders of Revenue Authorities under Madras Regula- tion VII of 1828.

3rd Sch. ACT XV OF 1874 (LAWS LOCAL EXTENT). **Laws Local Ext.**

(b).—ACTS OF THE SUPREME COUNCIL RELATING TO THE MADRAS PRESIDENCY.

Year and Number.		Subject.
1837,	XXXVI	... Criminal Jurisdiction of Collectors.
1839,	VII	... Tahsildars.
1840,	VIII	... Awards of Panchayats.
1844,	VI	... Duties.
1846,	I	... Pleaders.
1846,	IX	... <i>Harbours.</i>
1849,	X	... Commissioners of Revenue.
1853,	XX	... Pleaders.
1855,	X	... Section 10—Recusant witnesses.
1855,	XXI	... Minors.
1856,	VIII	... <i>Control of Gaols.</i>
1857,	VII	... Uncovenanted Agency.
1858,	I	... Compulsory Labour.
1859,	XXIV	... Police.
1860,	XXVIII	... Boundary Marks.

THIRD SCHEDULE.

(See section 5.)

(a).—BOMBAY REGULATIONS.

Year and Number.		Subject.
1827,	II	... Section 21 (caste questions): sections 47 to 54 (inclusive) and section 56 (pleaders).
1827,	IV	... Section 26 (law applicable to suits): section 69, clauses <i>second</i> and <i>third</i> (attachment and distraint of crops).
1827,	V	... Preamble: section 9 (acknowledgments of debt): section 14 (interest): section 15 (mortgages and pledges).
1827,	VIII	... Administration of Estates.
1827,	XII	... Section 19 (Magistrate's power to make rules): section 20 (standards of weights and measures): section 27, clause 2 (supervision of suspected persons): section 37, clauses <i>first</i> and <i>second</i> (responsibility of villagers for robberies).
1827,	XIII	... Section 34. clause <i>third</i> (letter substituted for summons).
1827,	XXII	... Sections 40, 41, 42, 43 (passage of troops).
1827,	XXV	... State Prisoners.

Laws Local Ext. ACT XV OF 1874 (LAWS LOCAL EXTENT). 4th Sch.

(a).—BOMBAY REGULATIONS—(Concluded).

Year and Number.		Subject.
1830,	V	... Section 1 (Revenue Commissioners) : section 2, clauses 1, 2, 3 (Collectors and Sub-Collectors).
1830,	XIII	... Civil Jurisdiction of Jagirdars.
1831,	XV	... Village Patels.
1832,	II	... Realization of Revenue.
1833,	V	... Hereditary Officers.

(b).—ACTS OF THE SUPREME COUNCIL RELATING TO THE BOMBAY PRESIDENCY.

Year and Number.		Subject.
1838,	XVI	... Judiciary.
1838,	XVIII	... Sureties.
1838,	XIX	... Coasting Vessels.
1839,	XX	... Revenue.
1840,	XV	... Agents of Foreign Sovereigns
1842,	XIII	... Revenue.
1842,	XVII	... Revenue Commissioners.
1844,	XIX	... Abolition of Town Duties.
1846,	I	... Pleaders.
1846,	III	... Sections 1, 5 and 6—Boundary Marks.
1853,	XX	... Pleaders.

FOURTH SCHEDULE.

(See section 6.)

(a).—BENGAL REGULATIONS (LOWER PROVINCES).

Year and Number.		Subject.
1793,	I	... Perpetual Settlement.
1793,	II	... Collection of Land-revenue.
1793,	VIII	... Rules for Decennial Settlement.
1793,	XI	... Native laws of inheritance to Revenue-paying land.
1793,	XIX	... Title to lands exempt from Revenue.
1793,	XXXVII	... Title to lands exempt from Revenue under badshahi grants.

4th Sch. ACT XV OF 1874 (LAWS LOCAL EXTENT). Laws Local Ext.

(a).—BENGAL REGULATIONS (LOWER PROVINCES)—(Concluded).

Year and Number.	Subject.
1793, XXXVIII	... Section 1—Preamble: Section 2—Prohibition of loans by Covenanted Servants.
1794, III	... Sections 13, 16, 17, 18, 19 and 20—Arrears of Revenue.
1799, V	... Wills and Intestacies of Natives.
1800, VIII	... Pargana Register of Lands.
1801, I	... Arrears of Revenue: Division of Joint Estates.
1804, X	... Punishment by Courts Martial of certain State Offences.
1806, XI	... Passage of Troops.
1810, XIX	... Maintenance of Bridges, &c.; Escheats.
1812, V	... Collection of Land-revenue.
1812, XI	... Removal of Foreign Emigrants.
1817, XX	... Section 29—Criminal process in Salt and Opium Departments: Section 30, clauses 1, 2 and 5—Building forts; Collecting sepoy stores; Encroaching on roads.
1818, III	... State Prisoners.
1819, II	... Resumption of Revenue-free lands.
1821, IV	... Powers of Collectors and Magistrates.
1822, III	... Boards of Land-revenue.
1822, XI	... Section 36—Khas management of purchases by Government: Section 38—Non-liability of Government for errors of Courts.
1823, VI	... Indigo Contracts.
1823, VII	... Prohibition of loans to Covenanted Civil Servants.
1825, VI	... Passage of Troops.
1825, IX	... Defaulting Malguzars.
1825, XI	... Alluvion and Diluvion.
1825, XIII	... Settlement of resumed Lakhiraj land.
1825, XIV	... Authority to confirm Lakhiraj tenures: Native grants.
1827, III	... Section 5—Evidence.
1827, V	... Management of Estates under attachment.
1828, III	... Appeals from decisions of Revenue Authorities.
1828, IV	... Section 1 and section 2, clause 4—Time during which Collectors are to be considered engaged in making settlements.
1829, I	... Commissioners of Revenue and Board of Revenue.
1829, XVII	... Widow-burning.
1830, V	... Sections 1 and 5—Indigo Contracts.

Laws Local Ext. ACT XV OF 1874 (LAWS LOCAL EXTENT). 5th Sch.

(b).—ACTS OF THE SUPREME COUNCIL RELATING TO THE
LOWER PROVINCES.

Year and Number.		Subject.
1836,	X	... Indigo Contracts.
1836,	XXI	... Creating Zilas.
1841,	XII	... Section 2—No Interest on Arrears of Land-revenue.
1847,	IX	... Assessment of new lands.
1848,	XX	... Land-revenue.
1850,	XLIV	... Board of Revenue.
1853,	XIX	... Section 26—Recusant witnesses.
1855,	XXXII	... Embankments.
1856,	XII	... Civil Court Amins.
1857,	XIII	... Opium.
1858,	XXXI	... Settlement of Alluvion.
1859,	XI	... Sales for Arrears of Revenue.

FIFTH SCHEDULE.

(See section 7.)

(a).—BENGAL REGULATIONS (NORTH-WESTERN PROVINCES).

Year and Number.		Subject.
1793,	XXXVIII	... Section 1—Preamble: Section 2—Prohibition of loans by Covenanted Servants.
1799,	V	... Wills and Administration to Natives.
1804,	X	... Punishment by Courts Martial of certain State Offences.
1806,	XI	... Passage of Troops.
1812,	XI	... Removal of Foreign Emigrants.
1818,	III	... State Prisoners.
1822,	XI	... Section 38—Non-liability of Government for errors of Courts.
1823,	VI	... Indigo Contracts.
1823,	VII	... Prohibition of loans to Covenanted Civil Servants.
1825,	VI	... Passage of Troops.
1825,	XI	... Alluvion and Dereliction.
1827,	III	... Section 5—Evidence.
1827,	V	... Management of Estates under Attachment.
1829,	XVII	... Widow-burning.
1830,	V	... Sections 1 and 5—Indigo Contracts.
1831,	XI	... Sections 1, 2, 5, 6—Police-powers of Tahsildars.
1833,	IX	... Deputy Collectors.

(b).—ACTS OF THE SUPREME COUNCIL RELATING TO THE
NORTH-WESTERN PROVINCES.

Year and Number.	Subject.
1836, X	... Indigo Contracts.
1836, XXI	... Creating Zilas.
1853, XIX	... Section 26—Recusant Witnesses.
1854, XVI	... Police.
1856, XII	... Civil Court Amins.
1856, XX	... Chaukidars.
1857, XIII	... Opium.

SIXTH SCHEDULE.

(See sections 2, 3, 4, 5, 6 and 7.)

PART I.

SCHEDULED DISTRICTS, MADRAS.

I.—*In Ganjam.*

1. The Gumsur Maliahs, including Chokapad.
2. The Surada Maliahs.
3. The Chinna Kimedi Maliahs.
4. The Pedda Kimedi Maliahs.
5. The Bodaguda Maliahs.
6. The Suranji Maliahs.
7. The Parla Kimedi Maliahs.
8. The Muttas of Korada and Ronaba (otherwise called Srikarma).
9. [The Chighatti Maliah.] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*
10. The Jurada Maliah.
11. The Jalantra Maliah.
12. The Mandasa Maliah.
13. The Budarashinghi Maliah.
14. The Kuttingia Maliah.

II.—*In Vizagapatam.*

1. The Jeypur Zamindari.
2. Golconda Hills, west of the River Boderu.
3. The Madugol Maliahs.
4. The Kasipur Zamindari.
5. The Panchipenta Maliahs.
6. Mondemkolla, in the Merangi Zamindari.
7. The Konda Mutta of Merangi.
8. The Gumma and Konda Muttas of Kurpam.
9. The Kottam, Ram and Konda Muttas of Palkonda.

III.—*In the Godavari District.*

1. The Bhadrachalam Taluq.
2. The Rakapilli Taluq.
3. The Rampa Country.

IV.—In the Indian Ocean.

The Laccadive Islands, including Minicoy.

PART II.

SCHEDULED DISTRICTS, BOMBAY.

- I.—The Province of Sindh.
II.—[*The Panch Mahals.*] *Rep. by the Panch Mahals Laws Act, 1885 (VII of 1885), with effect from the 1st May, 1895.*

III.—Aden.

IV.—The villages belonging to the following Mehwassi Chiefs :—

1. The Parvi of Kathi.
2. The Parvi of Nal.
3. The Parvi of Singpur.
4. Walwi of Gaohalli.
5. The Wassawa of Chikhli.
6. The Parvi of Nawalpur.

PART III.

SCHEDULED DISTRICTS, BENGAL.

- I.—The Jalpaiguri and Darjeeling Districts.
II.—The Hill Tracts of Chittagong.
III.—The Santhal Parganas.
IV.—The Chutia Nagpur Division.
V.—The Mahals of Angul and Banki.

PART IV.

SCHEDULED DISTRICTS, NORTH-WESTERN PROVINCES.

- I.—[*The Jhansi Division, comprising the Districts of Jhansi, Jalaun and Lalatpur*] *Rep. by the North-Western Provinces and Oudh Act, 1890 (XX of 1890), section 8 (1), with effect from the 1st April, 1891.*
II.—The Province of Kumaon and Garhwal.
III.—The Tarai Parganas, comprising—Bazpur, Kashipur, Jaspur, Rudarpur, Gadarpur, Kilpuri, Nanak-Mattha and Bilheri.
IV.—In the Mirzapur District—
 1. The tappas of Agori Khas and South Kon in the Pargana of Agori.
 2. The tappa of British Singrauli in the Pargana of Singrauli.
 3. The tappas of Phulwa, Dudhi and Barha in the Pargana of Bichipar.
 4. The portion lying to the South of the Kaimor Range.

V.—[*The Family Domains of the Maharaja of Benares, comprising the following parganas :—Bhadohi and Kheyra Mangror in the Mirzapur District; Kaswa Raja in the Benares District.*] *Rep. by the Benares Family Domains Act, 1881 (XIV of 1881), section 14, with effect from the 24th September, 1881.*

VI.—The tract of country known as Jaunsar Bawar in the Dehra Dun District.

PART V.

SCHEDULED DISTRICTS, PUNJAB.

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, Dera Ghazi Khan, Lahaul and Spiti.

PART VI.

SCHEDULED DISTRICTS, CENTRAL PROVINCES.

Chhattisgarh Zamindaris.

- | | |
|---------------------|-------------------|
| 1. Khariar. | 13. Matin. |
| 2. Bindra Nawagarh. | 14. Uprora. |
| 3. Sahezipur. | 15. Kenda. |
| 4. Gandai. | 16. Lapha. |
| 5. Silheti. | 17. Chhuri. |
| 6. Barbaspur. | 18. Korba. |
| 7. Thakurtola. | 19. Chapa. |
| 8. Lohara. | 20. Bora Sambhar. |
| 9. Gondardehi. | 21. Phuljhar. |
| 10. Fingeswar. | 22. Kolabira. |
| 11. Pandaria. | 23. Rampur. |
| 12. Pendra. | |

Chanda Zamindaris.

- | | |
|---------------------|-------------------|
| 1. Ahiri. | 11. Muramgaon. |
| 2. Ambagarh Chauki. | 12. Panabaras. |
| 3. Aundhi. | 13. Palasgarh. |
| 4. Dhanora. | 14. Rangi. |
| 5. Dudhmala. | 15. Sirsundi. |
| 6. Gewarda. | 16. Sonsari. |
| 7. Jharapapra. | 17. Chandala. |
| 8. Khutgaon. | 18. Gilgaon. |
| 9. Koracha. | 19. Pawi Mutanda. |
| 10. Kotgal. | 20. Pategaon. |

Chhindwara Jagirdaris.

- | | |
|----------------|--------------------|
| 1. Harai. | 7. Pachmarbi. |
| 2. Chhater. | 8. Partabgarh. |
| 3. Gorakbghat. | 9. Almod. |
| 4. Gorpani. | 10. Sonpur. |
| 5. Baktagarh. | 11. Bariam Pagara. |
| 6. Bardagarh. | |

PART VII.

The Chief Commissionership of Coorg.

PART VIII.

The Chief Commissionership of the Andaman and Nicobar Islands.

PART IX.

The Chief Commissionership of Ajmere and Merwara.

PART X.

The Chief Commissionership of Assam.

PART XI.

The Hill Tracts of Arakan.

PART XII.

The Pargana of Manpur.

PART XIII.

[*The Cantonment of Morar.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Legal Practitioners ACT I OF 1846 (LEGAL PRACTITIONERS). S. 1

THE LEGAL PRACTITIONERS ACT, 1846.

(ACT I OF 1846.)

[Passed on the 7th January, 1846.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1846	I	Legal Practitioners ...	Rep. in pt., Act XVI of 1874. " " Act XII of 1876. " " and Am., Act XII of 1891. " " and Am., Act XX of 1858, S. 4. Rep., locally, Act XX of 1865. " " Act XI of 1884, S. 9. " " Act XVIII of 1879, S. 42.

An Act for amending the Law regarding appointment and remuneration of Pleaders in the Courts of the East India Company.

1, 2 and 3. [Repeal of enactments.] Rep. by the Repealing Act, 1874 (XVI of 1874).

4. [1] * * * * The office of pleader in the Courts of the East India Company shall be open to all persons (a) of whatever nation or religion: Provided that no person shall be admitted a pleader in any of those Courts unless he have obtained a certificate in such manner as shall be directed by the Sadr Courts that he is of good character and duly qualified for the office, any law or Regulation to the contrary notwithstanding:

5. Provided [1] * * * * that every barrister of any of Her Majesty' Courts of Justice in India shall be entitled as such to plead in any of the Sadr Courts of the East India Company, subject however to all the rules in force in the said Sadr Courts applicable to pleaders whether relating to the language in which the Court is to be addressed or to any other matter.

Bom. Reg. II of 1827. Enactment to cease to have force except for specified purposes.

6. [2] * * * Section 52, Regulation II, 1827, of the Bombay Code, shall cease to be enforced, excepting for the purpose specified in section 7 of this Act.

Leg. Changes:—[1] Repealed by Act XVI of 1874. [2] Repealed by Act XVI of 1874 and Act XII of 1891.

Case-law:—(a) A woman though otherwise qualified, not entitled to be enrolled as legal practitioner, 21 C.W.N. 74—24 O.L.J. 382.

S. 12 ACT I OF 1846 (LEGAL PRACTITIONERS). Legal Practitioners

7. [1] * * * Parties employing authorised pleaders in the said Courts shall be at liberty to settle with them by private agreement (a) the remuneration to be paid for their professional services, and [2] * it shall not be necessary to specify such agreement in the vakalatnama (b) : Provided that when costs are awarded to a party in any regular suit, original or appeal, decided on the merits, against another party, the amount to be paid on account of fees of pleaders shall be calculated according to the rules contained [3] in the section of the Regulation [3] specified in section 6 of this Act ; and that when costs are awarded in other cases the amount to be paid on account of such fees shall be one-fourth of what it would have been in a regular suit decided on its merits.
- Private agreement between parties and pleaders.
Calculation of pleaders' fees out of costs awarded in regular suits.
In other cases.
8. [1] * * * Private agreements between parties and their pleaders respecting the remuneration to be paid for professional services shall not be enforced otherwise than by a regular suit.
- Enforcement of private agreements.
9. [4] * * * Persons taking [2] * opinions from authorized pleaders shall be at liberty to settle with them by private agreement the remuneration to be paid for such opinions.
- Remuneration for opinions.
10. [1] * * * Whenever a pleader has rendered himself liable to a fine (c) in the Court of a Principal Sadr Amin or Sadr Amin, it shall be competent to such Principal Sadr Amin or Sadr Amin to impose such fine : Provided that an appeal from all orders imposing such fines shall lie to the Zila or City Judge, whose decision thereon shall be final.
- Power of Sadr Amin to fine pleader.
Appeal.
11. [1] * * * The rules applicable to pleaders in the Courts of the Zila and City Judges shall henceforth be applicable, so far as they are capable of application, to pleaders in the Munsifs' Courts.
- Rules applied.
12. [1] * * * Whenever a pleader has conducted himself in such a manner in the Court of a Munsif as would have rendered him liable to a fine if he had so conducted himself in the Court of a Zila or City Judge, it shall be competent to such Munsif to impose such fine : Provided that an appeal from all orders imposing such fine shall lie to the Zila or City Judge, whose decision thereon shall be final.
- Power of Munsif to fine pleader.
Appeal.

Leg. Changes :—[1] Repealed by Act XVI of 1874. [2] Repealed by Act XII of 1876. [3] Substituted by Act XII of 1891. [4] Repealed by Act XVI of 1874 and Act XII of 1876.

Case-law :—(a) Agreements called *Inam pattras*, not illegal, 8 B. 413 ; 5 B. 258 ; barrister as such cannot enter into binding—for fees, 3 M. 139 (F.B.). (b) Agreement entered into after execution of—, not enforceable, 2 B. 362. (c) Pleader pressing question found by Court to be improper, not liable to—, 7 B.H.C.A.C. 102.

Legal Practitioners ACT XX OF 1853 (LEGAL PRACTITIONERS). S. 1

13. [1] * * * Nothing in this Act contained shall apply to vakils who may be employed in the Courts of the Village Munsifs, or before the Village or District Panchayats, or before the Collectors of Zilas, under the provisions of Regulations IV, V, VII and XII, 1816, of the Madras Code.

Mad. Reg.,
IV, V, VII,
and XII of
1816.

THE LEGAL PRACTITIONERS ACT, 1853.

(ACT XX OF 1853.)

[Passed on the 8th December, 1853.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1853	XX	Legal Practitioners	Rep. in pt., Act XIV of 1870. Rep. (locally), Act XX of 1866. " " Act XVIII of 1879. " " Act IX of 1884, S. 9. " (in Burma), Act XIII of 1898, S. 18.

An Act to amend the Law relating to Pleaders in the Courts of the East India Company.

WHEREAS it is expedient to amend the law relating to Pleaders (a) in the Courts of the East India Company; It is enacted as follows:—

1. [Repeal of enactments.] Rep. by the Repealing Act, 1870 (XIV of 1870).

2. No pleader shall be bound to attend in any of the Courts of the East India Company, on any day fixed for the transaction of civil business, or to notify to the Court his inability to attend, unless he shall be employed in some cause or business which, according to the practice of the Court, may be heard or transacted therein on that day, anything in any law or regulation to the contrary notwithstanding.

Pleader not bound to attend Court except at hearing of cause in which he is employed.

3. Every attorney on the roll of any of Her Majesty's Supreme Courts of Judicature in India shall be entitled as such to plead in any of the Sadr Courts of the East India Company, subject however to all the rules for the time being in force in the said Sadr Courts respectively, applicable to barristers pleading therein, whether relating to the language in which the Court is to be addressed or to any other matter.

Right of Supreme Court attorneys to plead in all Sadr Courts.

Leg. Changes:—[1] Repealed by Act XVI of 1874.

Case-law:—(a) A woman though otherwise qualified, not entitled to be enrolled as legal practitioner, 24 C.L.J. 382=21 C.W.N. 74.

S. 1 **ACT XVIII OF 1879 (LEGAL PRACTITIONERS). Legal Prac.**

4. That part of section 4, Act No. I of 1846, which provides that **I of 1846.**

Barristers and attorneys of Supreme Courts not required to produce certificate of character, etc., but may plead in all subordinate Courts.

no person shall be admitted a pleader in any of the Courts of the East India Company, unless he have obtained a certificate in such manner as shall be directed by the Sadr Courts that he is of good character and duly qualified for the office, shall not extend to barristers or attorneys of any of the said Supreme Courts; but every such barrister and attorney shall be entitled as such to plead in any of the Courts of the East India Company subordinate to the Sadr Courts, subject to all the rules in force in the said subordinate Courts respectively applicable to pleaders therein, so far as such rules relate to the language in which the Court is to be addressed or to any other matter connected with pleading therein.

THE LEGAL PRACTITIONERS ACT, 1879.

(ACT XVIII OF 1879.)

[Passed on the 29th October, 1879.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1852	XVIII	Pleaders, Lower Provinces . .	Rep., Act XX of 1865.
1865	XX	Pleaders, Mukhtears and Revenue Agents.	" " XVIII of 1879.
1865	XXIX	Amending, Act XX of 1865 ...	" " "
1866	IX	Extending, Act XX of 1865...	" " "
1876	IV	Revenue Agents, Bengal ...	" " "
1877	XVII	Punjab Courts Act ...	" in pt., Act XVIII of 1879.
1879	XVIII	Legal Practitioners ...	Am., Act IX of 1884.
			" " XI of 1896.
			" " VI of 1900.
			" " I of 1903.
			" " I of 1908.
			Rep. (locally) except S. 36, Reg. VII of 1901.

An Act to consolidate and amend the law relating to Legal Practitioners.

WHEREAS it is expedient to consolidate and amend the law relating

Preamble.

to Legal Practitioners in the Lower Provinces of Bengal, the North-Western Provinces, the Punjab, Oudh, the Central Provinces and Assam, and to empower each of the Local Governments of the rest of British India to extend to the territories administered by it such portions of this Act as such Government may think fit; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called the Legal Practitioners Act, 1879: and shall come into force on the first day of January, 1880.

Commencement.

Local extent. This section and section 2 extend to the whole of British India.

The rest of this Act extends, in the first instance, only to the territories respectively administered by the Lieutenant Governors of the Lower Provinces of Bengal, the North-Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces and Assam. But any other Local Government may from time to time, by notification in the official Gazette, extend all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration.

Repeal of enactments. 2. On and from the first day of January, 1880, the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified therein.

Saving of rules, etc. All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, certificates issued, sanctions given and orders passed under any enactment hereby repealed shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given and passed under this Act.

References to repealed enactments. All references made to any enactment hereby repealed, in any Act or Regulation passed, or notification published, shall be read as if made to the corresponding provisions of this Act.

Interpretation-clause. 3. In this Act, unless there be something repugnant in the subject or context,—

“Judge” means the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated :

“Subordinate Court” means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No. XV of 1882 or Act No. IX of 1887 :

“Revenue-office” includes all Courts (other than Civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents :

“legal practitioner” means an Advocate, Vakil or Attorney of any High Court, a Pleader, Mukhtar or Revenue-agent :

[1] “tout” means a person who procures the employment in any legal business of any legal practitioner in consideration of any remuneration moving from such practitioner, or proposes to a legal practitioner to procure his employment in any legal business in consideration of such remuneration.

CHAPTER II.

OF ADVOCATES, VAKILS AND ATTORNEYS.

4. Every person now or hereafter entered as an Advocate or Vakil^(a) on the roll of any High Court under the Letters Advocates and Patent constituting such Court, or [1] under section 41 Vakils. of this Act, [1] [2] or enrolled as a Pleader in the Chief Court of the Punjab under section 8 of this Act, [2] shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered, and in all Revenue-offices situate within the local limits of the appellate jurisdiction of such Court, subject, nevertheless, to the rules in force relating to the language in which the Court or office is to be addressed by Pleaders or Revenue-agents: and any person so entered who ordinarily practises in the Court on the roll of which he is entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court on whose roll he is not entered, or, with the permission of the Court, in any High Court on whose roll he is not entered, and in any Revenue-office:

Provided that no such Vakil [3] or pleader [3] shall be entitled to practise under this section before a Judge of the High Court, Division Court or High Court exercising original jurisdiction (b) in a Presidency-town.

5. Every person now or hereafter entered as an Attorney (c) on the roll of any High Court shall be entitled to practise in Attorneys of High all the Courts subordinate to such High Court and in Court. all Revenue-offices situate within the local limits of the appellate jurisdiction of such High Court, and every person so entered who ordinarily practises in the Court on the roll of which he is so entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court established by Royal Charter on the roll of which he is not entered and in any Revenue-office.

The High Court of the Province in which an Attorney practises under this section may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of an Attorney so practising.

Leg. Changes:—[1] Substituted for the words "as an advocate on the roll of the Chief Court of the Punjab" by Act IX of 1884, S. 2. [2] Inserted by Act I of 1908. [3] Added by Act I of 1908.

Case-law:—(a) Relation of pleader and client may subsist before execution of *vakalatnamah*, 4 C.L.J. 262. (b) See 37 C. 853; vakils have right of audience on the Original Side of the Madras High Court under rules of that Court, 31 M.L.J. 698= (1916) 2 M.W.N. 529; the right is not affected by S. 4 or S. 27 of the Act, *ibid*. (c) Exempt from stamp-duty when subsequently enrolled as advocate, 36 C. 645=9 C.L.J. 621; may be examined as witness in a case in which he acted as advocate for a party, 5 B.L.R. App. 28; attorney who is assistant in a firm of solicitors cannot take articulated clerk, 19 C.W.N. 402; limitation for suit to recover costs, 35 C. 171; 36 C. 609; liable to suspension if he appears for both parties, 8 C.L.J. 165 (F.B.); suspension from practising as attorney on original side, no bar to practise as vakil on appellate side, Bourke O.C. 377; as to High Court's power to strike attorney off the rolls, see 1 B.L.R. (P.C.) 55=10 W.R. 48.

CHAPTER III.

OF PLEADERS AND MUKHTARS.

Power to make rules as to qualifications, etc., of Pleaders and Mukhtars.

6. The High Court (a) may, from time to time, make rules consistent with this Act as to the following matters namely :—

- (a) the qualifications (b), admission and certificates of proper persons to be Pleaders of the subordinate Courts, and of the Revenue-offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter, of such Court ;
- (b) the qualifications, admission and certificates of proper persons to be Mukhtars of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, of such Court ;
- (c) the fees to be paid for the examination and admission of such persons ; and
- (d) the suspension and dismissal of such Pleaders and Mukhtars.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law : Provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the Local Government.

7. On the admission, under section 6, of any person as a Pleader or Mukhtar, the High Court shall cause a certificate, signed by such officer as the Court, from time to time, appoints in this behalf, to be issued to such person, authorising him to practise up to the end of the current year in the Courts, and, in the case of a Pleader, also the Revenue-offices, specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules consistent with this Act which may, from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed (c) by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time, appoints in this behalf.

On every such renewal, the certificate then in possession of such Pleader or Mukhtar shall be cancelled and retained by such Judge or officer.

Case-law :—(a) For purposes of the Act the Commissioner of Kumaon is High Court for the province of Kumaon and Garhwal, 24 A. 348 (F.B.). (b) A woman though otherwise qualified, is not entitled to be enrolled as legal practitioner, 24 O.L.J. 382 = 21 C.W.N. 74. (c) Renewal cannot be refused merely because District Judge formed an unfavourable opinion of pleader's character in a case in which pleader was a party, 13 C.W.N. 415 ; nor on ground of mere suspicion of his implication in sending anonymous petitions about Government servants, 12 C.W.N. 919 ; nor on ground of pendency of criminal proceedings against him unless District Judge also takes proceedings under S. 14, A.W.N. (1901) 60.

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Every certificate so renewed shall be signed by such Judge or officer, and shall continue in force up to the end of the current year.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court.

[1] Provided that, on the admission as a pleader of any person who has been previously entered as a vakil or attorney on the roll of a High Court established by Royal Charter, the High Court may in its discretion issue to such person a certificate authorizing him to practise permanently in the Courts and in the offices specified therein, and a certificate so issued shall not require to be renewed under this section.

8. Every Pleader holding a certificate issued under section 7 may
Pleaders on enrolment may practise in Courts and Revenue-offices. apply to be enrolled in any Court or Revenue-office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court (a) by which he has been admitted; and, subject to such rules consistent with this Act as the High Court or the Chief Controlling Revenue-authority may, from time to time, make in this behalf, the presiding Judge or officer shall enrol him accordingly, and thereupon he may appear, plead and act in such Court or office and in any Court or Revenue-office subordinate thereto.

9. Every Mukhtar holding a certificate issued under section 7 may
Mukhtars on enrolment may practise in Courts. apply to be enrolled in any Civil or Criminal Court mentioned therein and situate within the same limits; and, subject to such rules as the High Court may from time to time make in this behalf, the presiding Judge shall enrol him accordingly; and thereupon he may practise as a Mukhtar in any such Civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure, 1882), appear, plead and act in any such Criminal Court (b) and any X of 1882. Court subordinate thereto.

10. (c) Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a Pleader or Mukhtar in any Court not established by Royal Charter unless he holds a certificate issued under section 7 and has been enrolled in such Court or in some Court to which it is subordinate :
No person to practise as Pleader or Mukhtar unless qualified.

Leg. Changes :—[1] Added by Act I of 1908, S. 3.

Case-law :—(a) Courts of Kumaon and Garhwal are not subject to jurisdiction of High Court of N.W.P. for purposes of this Act, 24 A. 348 (F.B.). (b) Mukhtar can appear in criminal cases only with permission of Court in each case, 30 A. 66 (F.B.). (c) Section contravened by a person acting as pleader without certificate even on a single occasion, 44 P.R. 1887, Cr.; contravention of section in Court of subordinate magistrate to be punished only by that magistrate under S. 32 and not by District Magistrate, 4 A. 375.

Provided that persons who have been admitted as Revenue-agents before the first day of January, 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant-Governor of Bengal, may be enrolled in manner provided by section 9 in any Munsif's Court in the said territories, and on being so enrolled may appear, plead and act in such Court in suits under Bengal Act VIII of 1869 (to amend the procedure in suits between Landlord and Tenant) or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents.

11. Notwithstanding anything contained in the Code of Civil Procedure, the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of Mukhtars practising in the subordinate Courts, and, in the case of a High Court not established by Royal Charter, in such Court.

Revenue-agents may appear, plead and act in Munsifs' Courts in suits under Bengal Act VIII of 1869.

12.(a) The High Court (b) may (c) suspend or dismiss (d) any Pleader or Mukhtar holding a certificate issued under section 7 who is convicted of any criminal offence (e) implying a defect of character which unfits him to be a Pleader or Mukhtar, as the case may be.

Power to declare functions of Mukhtars.

[1] 13.(f) The High Court may also, after such inquiry (g) as it thinks fit, suspend or dismiss (h) any Pleader or Mukhtar holding a certificate as afore-said—

(a) who takes instructions (i) in any case except from the party on whose behalf he is retained, or some person who is the recognized agent (j) of such party within the meaning of the Code of Civil Procedure, or some servant, relative or friend authorised by the party to give such instructions, or

Leg. Changes :—[1] Substituted for the original section by Act XI of 1896, S. 2.

Case-law :—(a) Scope of section, 6 N.L.R. 199; 13 O.W.N. 415. (b) A subordinate Court has no jurisdiction to initiate proceedings under section, 11 O.L.J. 164. (c) Power discretionary. 6 N.L.R. 129. (d) May re-admit a dismissed pleader after lapse of time, 12 C.L.J. 635; 14 O.L.J. 113. (e) Conviction under S. 124-A, I.P.C., *prima facie* implies defect of character, 6 N.L.R. 129; also conviction for rioting, 14 O.W.N. 1073; whether pleader can go behind conviction and show that he committed no offence, 7 A. 290 (F.B.); 22 A. 49 (P.C.); 14 O.W.N. 1073; 6 N.L.R. 129. (f) Scope of section, 6 N.L.R. 129. (g) Inquiry is a judicial proceeding, 6 M. 252; notice formulating charges with precision to be given before inquiry, 19 M.L.J. 504 (F.B.)=6 M.L.T. 253; no oath to be administered to the pleader whose conduct is inquired into, 6 M. 252; inquiry may be made by subordinate Court under orders of High Court, 20 O.W.N. 1284=24 C.L.J. 190; subordinate Court in which pleader practises may take action under S. 14 and report to High Court, 31 P.W.R. 1909, Cr. (h) Even for misconduct prior to enrolment, 6 C.W.N. 556 (F.B.); dismissed Pleader may be re-admitted after lapse of time, 14 O.L.J. 113; *vakil's* duty to Court, client and profession, explained, (1912) M.W.N. 963 (P.C.). (i) See 20 O.W.N. 1016; acting honestly without instructions from client, not prohibited, 1 Ind. Cas. 667. (j) Pleader's duty to ascertain whether agent has authority to instruct on behalf of client, 24 C.L.J. 190=20 O.W.N. 1284.

- (b) who is guilty of fraudulent or grossly improper conduct (a) in the discharge of his professional duty, or
- (c) who tenders, gives or consents to the retention, out of any fee (b) paid or payable to him for his services, of any gratification (c) for procuring or having procured the employment in any legal business of himself or any other Pleader or Mukhtar, or
- (d) who, directly or indirectly procures or attempts to procure the employment of himself as such Pleader or Mukhtar through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or
- (e) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or
- (f) for any other reasonable cause (d).

Case-law :—(a) *E.g.*, appropriating client's money, 31 C. 44; 20 M.L.J. 494 (F.B.); 30 P.W.R. 1917, Cr.; using objectionable language in petition or letter to Court, 9 P.R. 1902, but not if it is in capacity of suitor, 24 M. 17; 18 M.L.J. 184; bribing or offering to bribe witness though to speak truth, 5 C.W.N. 45; changing sides in same proceeding, 2 P.R. 1904, Cr.=45 P.L.R. 1904; 1 N.L.R. 52 (57); but not after conclusion of business if former client's secrets are not betrayed, 2 P.R. 1904, Cr.; U.B.R. (1910) 2nd Qr. 50=8 Ind. Cas. 1174; recklessly signing *vakalat* without seeing whether he was already engaged by other side, 18 Ind. Cas. 268 (F.B.); advising client to absent himself that case might be dismissed for default, 56 P.R. 1902; inducing Government servants to act contrary to their duty, 29 A. 61=3 A.L.J. 811; agreement to receive fee on chance of success, 61 P.R. 1907 (F.B.); but not where such agreement is not acted upon, 8 A.L.J. 151 (F.B.); agreement to share in the result of litigation, 141 P.L.R. 1904; 109 P.W.R. 1910; 4 O.C. 229; 4 C.L.J. 262; to induce client to enter into extortionate agreement with money-lender to secure his fee, 11 Bom. L.R. 1150; to lend money on usurious terms, 8 Ind. Cas. 677; engaging in trade, (1912) M.W.N. 1099; to purchase an actionable claim, *ibid.*; to employ clerks known to be dishonest, (1912) M.W.N. 962 (P.C.); 49 P.W.R. 1914, Cr. (F.B.); to issue notice known to be false, 6 M.L.T. 329; to institute false suit supporting it by gross perjury, 13 Cr. L.J. 875=17 Ind. Cas. 811; to present petition containing unfounded allegations against Judge, 8 M.L.T. 375; to preside at meeting in which resolution against Judge was passed, 10 Bom. L.R. 1169; to cheat clients, 14 C.W.N. 521 (P.C.)=11 O.L.J. 438; to abandon client in the midst of his examination in Court to attend to another case, 14 Cr. L.J. 379=20 Ind. Cas. 139; misstatement of age in application for enrolment in provincial service, 14 C.L.J. 113; but not refusal to accept brief on political grounds, 85 C. 317; nor failure to look into records before applying for stay of execution on ground of compromise, 17 W.R. 405; nor using private copies of public documents, 10 C. 256; nor insertion of untenable grounds in a petition, 4 C.W.N. 663; nor inducing client to accept less than amount due, 5 A.L.J. 126; nor using against former client information obtained from him if it could have been obtained from other sources also, 9 Bom. L.R. 38; nor false statement against himself in letter to client for realizing his fee, 15 C.L.J. 224; nor inserting in *vakalatnamah* after execution name of *Mukhtar* actually engaged at client's request, 17 C.W.N. 328. (b) Fee does not include *Munshiana* (or clerk's fee), 27 P.R. 1910, Cr.; to sustain charge under clause, gratification should be out of fee paid or payable to pleader himself, *ibid.* (c) *E.g.*, pleader paying commission to *Mukhtar*, 11 B.L.R. 319. (d) Words not restricted to matters *ejusdem generis* with those in cls. (a) to (c), 18 P.R. 1916; 29 C. 890=6 C.W.N. 556 (F.B.); 19 M.L.J. 504 (F.B.); 20 M.L.J. 500; 34 M. 29 (F.B.); 6 N.L.R. 129; misconduct need not be in professional capacity, *ibid.*; *e.g.*, misconduct prior to enrolment, 27 C. 1073; 29 C. 890=6 C.W.N. 556 (F.B.); writing anonymous letter to officer holding an enquiry with intent to prejudice him, 26 M. 448; attesting will after testator's death, 14 C.L.J. 606; a contempt of Court may be of such character as to fall under the clause, 24 C.L.J. 190=20 C.W.N. 1284; *mukhtear* acting as go between for bribing Police, 21 C.W.N. 516.

14.(a) If any such Pleader or Mukhtar practising in any subordinate Court or in any Revenue-office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid (b), the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the Pleader or Mukhtar at least fifteen days before the day so appointed.

On such day, or on any subsequent day to which the enquiry (c) may be adjourned, the presiding officer shall receive and record all evidence (d) properly produced in support of the charge, or by the Pleader or Mukhtar, and shall proceed to adjudicate on the charge.

If such officer finds the charge established and considers that the Pleader or Mukhtar should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend or dismiss (e) the Pleader or Mukhtar.

Any District Judge, or with his sanction any Judge subordinate to him, [1] any Judge of a Court of Small Causes of a Presidency-town, [4] any District Magistrate, or with his sanction any Magistrate subordinate to him, and any Revenue-authority not inferior to a Collector, or with the Collector's sanction any Revenue-officer subordinate to him, may, pending the investigation (f) and the orders of the High Court, suspend (g) from practice any Pleader or Mukhtar charged before him or it under this section.

Every report made to the High Court under this section shall—

(a) when made by any Civil Judge subordinate to the District Judge, be made through such Judge;

Leg. Changes:—[1] Inserted by Act IX of 1884, S. 4.

Case-law:—(a) Section does not apply to persons having no license to practise, 19 C.L.J. 110. (b) Section applies to misconduct under all clauses of S. 13, 29 A. 61; 18 M.L.J. 549; 20 C.W.N. 1284=24 C.L.J. 190; 31 P.W.R. 1909, Cr.: Court informed of misconduct should take steps for adjudication of matter, 15 C. 152 (P.C.). (c) Inquiry is a judicial proceeding, 6 M. 252; (1917) M.W.N. 303=32 M.L.J. 402; 1 Pat. L.J. 576; Court competent to hold inquiry, 18 M.L.J. 184; inquiry can't be delegated or transferred to one who is not presiding officer of Court in which malpractice was committed, 1 Pat. L.J. 576; charge against second grade pleader not to be inquired into by District Judge, (1917) M.W.N. 303; procedure if pleader fails to appear to answer charge, 18 M.L.J. 184; in action taken under section, procedure prescribed by it to be strictly followed, 15 C.W.N. 764. (d) As to nature and sufficiency of evidence, see (1912) M.W.N. 1029; 9 Bom. L.R. 3 (P.C.); *ibid* 1042; *ibid* 866; 11 Bom. L.R. 1150; no oath to be administered to the pleader whose conduct is inquired into, 6 M. 252. (e) High Court should confine itself to charge framed by primary Court, 20 C.W.N. 1016; opportunity for defence to be given before suspension or dismissal, 15 C. 152 (P.C.); 24 M. 83; 15 W.R. 171; dismissed pleader may be re-admitted after lapse of time, 14 C.L.J. 113. (f) *I.e.*, one by High Court, 15 C.W.N. 269=13 C.L.J. 569. (g) Opportunity for defence to be given before suspension, 13 C.L.J. 457; suspension before report to High Court, illegal, 13 C.L.J. 457; 26 P.R. 1884, Cr.; order of the District Judge refusing to renew pleader's certificate pending prosecution under S. 209, I.P.C., legality of, 38 A. 182 (F.B.)=14 A.L.J. 82=17 Cr. L.J. 152=33 Ind. Cas. 682 (F.B.).

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- (b) when made by a Magistrate subordinate to the Magistrate of the District, be made through the Magistrate of the District and the Sessions Judge ;
- (c) when made by the Magistrate of the District, be made through the Sessions Judge ;
- (d) when made by any Revenue-officer subordinate to the Chief Controlling Revenue-authority, be made through such Revenue-authorities as the Chief Controlling Revenue-authority may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate or Revenue-authority through whom or which it is made.

Power to call for record in case of acquittal under section 14. 15. The High Court, in any case in which a Pleader or Mukhtar has been acquitted under section 14 otherwise than by an order of the High Court, may call for the record and pass such order thereon as it thinks fit.

Power to make rules for Mukhtars on appellate side of High Court. 16. Notwithstanding anything contained in any Letters Patent or in the Code of Civil Procedure, section 37, clause (a), any High Court established by Royal Charter may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

- (a) the qualifications and admission of proper persons to be Mukhtars practising on the appellate side of such Court ;
- (b) the fees to be paid for the examination and admission of such persons ;
- (c) the security which they may be required to give for their honesty and good conduct ;
- (d) the suspension and dismissal of such Mukhtars ; and
- (e) declaring what shall be deemed to be their functions, powers and duties ;

and may prescribe and impose fines for the infringement of such rules, not exceeding in any case five hundred rupees ; and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction.

CHAPTER IV.

OF REVENUE-AGENTS.

Power to make rules as to qualifications, etc., of Revenue-agents. 17. The Chief Controlling Revenue-authority may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

- (a) the qualifications, admission and certificates of proper persons to be Revenue-agents ;
- (b) the fees to be paid for the examination and admission of such persons ;

- (c) the suspension and dismissal of such Revenue-agents ; and
- (d) declaring what shall be deemed to be their functions, powers and duties.

Publication of rules. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

18. On the admission of any person as a Revenue-agent under section 17, the Chief Controlling Revenue-authority shall cause a certificate, signed by such officer as such authority from time to time appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in such Revenue-offices as may be specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue-authority, or by any other officer authorised by such authority in that behalf.

On every such renewal, the certificate then in the possession of such Revenue-agent shall be cancelled and retained by such Secretary or other officer.

Every certificate so renewed shall be signed by such Secretary or other officer and shall continue in force to the end of the current year.

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue-authority.

19. Every Revenue-agent holding a certificate issued under section 18 may apply to be enrolled in any Revenue-office mentioned therein and situate within the limits of the territory under the Chief Controlling Revenue-authority ; and, subject to such rules as the Chief Controlling Revenue-authority may, from time to time, make in this behalf, the officer presiding in such office shall enrol him accordingly, and thereupon he may practise as a Revenue-agent in such office and in any Revenue-office subordinate thereto.

20. Except as provided by this Act or any other enactment for the time being in force, no person, other than a Pleader duly qualified under the provisions hereinbefore contained, shall practise as a Revenue-agent in any Revenue-office, unless he holds a certificate issued under section 18 and has been enrolled in such office or some other office to which it is subordinate :

Provided that any person duly authorised in this behalf may, with the sanction of the Chief Controlling Revenue-authority, or of an officer empowered by the Local Government in this behalf, transact all or any business in which his principal may be concerned in any Revenue-office.

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the authority or officer granting the same.

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21. The Chief Controlling Revenue-authority may suspend or dismiss any Revenue-agent holding a certificate issued under this Act who is convicted of any criminal offence implying a defect of character which unfits him to be a Revenue-agent.

Dismissal of
Revenue-agent con-
victed of criminal
offence.

Suspension and
dismissal of
Revenue - agents
guilty of unpro-
fessional conduct.

[1] 22. The Chief Controlling Revenue-authority may also, after such inquiry as it thinks fit, suspend or dismiss any Revenue-agent holding a certificate as aforesaid—

- (a) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or
- (b) who tenders, gives or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other Revenue-agent, or
- (c) who, directly or indirectly, procures or attempts to procure the employment of himself as such Revenue-agent through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or
- (d) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or
- (e) for any other reasonable cause.

23. If any Revenue-agent holding a certificate issued under this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue-authority, or in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the person charged at least fifteen days before the day so appointed. On such day or on any other day to which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge, or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established, and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Chief Controlling Revenue-authority; and such authority shall proceed to acquit, suspend or dismiss him.

Any Revenue-officer not inferior to a Collector, and, with the Collector's sanction, any Revenue-officer subordinate to him, or any Munsif in his district, may, pending the investigation and the orders of the Chief Controlling Revenue-authority, suspend from practice any Revenue-agent charged before him under this section.

Leg. Changes:—[1] Substituted by Act XI of 1896.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall transmit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case.

24. The Chief Controlling Revenue-authority, in any case in which a Revenue-agent has been acquitted under section 23 otherwise than by an order of the Chief Controlling Revenue-authority, may call for the record and pass such order thereon as seems fit.

Power to Chief Controlling Revenue-authority to call for record.

CHAPTER V.

OF CERTIFICATES.

25. Every certificate, whether original or renewed, issued under this Act shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed^[1] and of such description as the Local Government may, from time to time, prescribe.^[1]

Fee for certificates.

Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed.

^[2] Provided also that no stamped paper shall be required in the case of a certificate, whether original or renewed, authorizing, under section 7, a vakil or attorney on the roll of a High Court established by Royal Charter to practise as a pleader.

26. When any Pleader, Mukhtar or Revenue-agent is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue-authority (as the case may be) orders him to deliver the same.

Dismissed practitioners to surrender certificates.

CHAPTER VI.

OF THE REMUNERATION OF PLEADERS, MUKHTARS AND REVENUE-AGENTS.

27. The High Court shall, from time to time, fix and regulate the fees payable by any party in respect of the fees of his adversary's Advocate, Pleader, Vakil, Mukhtar or Attorney upon all proceedings (a) on the appellate side (a) of such Court, (b) in the case of a High Court not established by Royal Charter, on its original side, and (c) in subordinate Courts, ^[3]and in respect of the fees of his adversary's Revenue-agent appearing, pleading or acting under section 10.^[3]

High Court and Chief Controlling Revenue-authority to fix fees on civil and revenue proceedings.

The Chief Controlling Revenue-authority shall, from time to time, fix and regulate the fees payable upon all proceedings in the Revenue-offices

Leg. Changes:—[1] Inserted by Act IX of 1884, S. 4. [2] Added by Act I of 1908, S. 4. [3] Added by Act IX of 1884, S. 6.

Case-law:—(a) Right of audience of vakils on the original side of Madras High Court under the Court rules, not affected by the section, 31 M.L.J. 698.

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by any party in respect of the fees of his adversary's Advocate, Pleader, Vakil, Attorney, Mukhtar or Revenue-agent.

Tables of the fees so fixed shall be published in the local official Gazette.

Exception as to agents mentioned in section 20.

Nothing in this section applies to the agents mentioned in the proviso to section 20.

28. No agreement entered into by any Pleader (a), Mukhtar or Revenue-agent with any person retaining or employing him, respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges or disbursements in respect of business done or to be done by such Pleader, Mukhtar or Revenue-agent shall be valid unless it is made in writing signed by such person, and is, within fifteen days from the day on which it is executed, filed in the District Court or in some Court in which some portion of the business in respect of which it has been executed has been or is to be done.

Agreements with clients.

29. Where a suit is brought to enforce any such agreement, if the agreement is not proved to be fair and reasonable, the Court may reduce the amount payable thereunder or order it to be cancelled, and the costs, fees, charges and disbursements in respect of the business done to be ascertained in the same manner as if no such agreement had been made.

Power to modify or cancel agreements.

30. Such an agreement shall exclude any further claim of the Pleader, Mukhtar or Revenue-agent beyond the terms of the agreement with respect to any services, fees, charges or disbursements in relation to the conduct and completion of the business in respect of which the agreement is made, except such services, fees, charges or disbursements, if any, as are expressly excepted by the agreement.

Agreements to exclude further claims.

31. A provision in any such agreement that the Pleader, Mukhtar or Revenue-agent shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as such Pleader, Mukhtar or Revenue-agent, shall be wholly void.

Reservation of responsibility for negligence.

CHAPTER VII.

PENALTIES.

32. Any person (b) who practises (c) in any Court or Revenue-office in contravention of the provisions of section 10 or section 20 shall be liable, by order of such Court or the officer (d) at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorising him so to

On persons illegally practising as Pleaders, Mukhtars or Revenue-agents.

Case-law :—(a) Barrister cannot sue for fees, 3 N.W.P. 83; nor can he be sued for return of back fee, 87 P.L.R. 1906 (F.B.). (b) Includes pure outsider as well as duly qualified and enrolled mukhtar who failed to take out certificate, 14 C. 556 (F.B.). (c) Practice need not be habitual, a single act done in professional capacity is enough, 26 A. 380. (d) Only the Court or officer before whom the pleader practises can punish him, 4 A. 375.

practise in such Court or office, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done or any disbursement made by him as Pleader, Mukhtar or Revenue-agent, whilst he has been contravening the provisions of either of such sections.

33. Any Pleader, Mukhtar or Revenue-agent failing to deliver up his certificate as required by section 26 shall be liable, by order of the Court, Authority or officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to three months.

On suspended or dismissed Pleader, etc., failing to deliver certificate.

34. Any Pleader, Mukhtar or Revenue-agent who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a Pleader, Mukhtar or Revenue-agent in any Court or Revenue-office, shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding five hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

On suspended or dismissed practitioner practising during suspension or after dismissal.

35. Every order under section 32, 33 or 34 shall be subject to revision by the High Court where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue-authority where the order has been passed by an officer subordinate to such Authority.

Revision of fines.

[1] 36. (1) (a) Every High Court, District Judge, Sessions Judge, District Magistrate and Presidency Magistrate, every Revenue-officer, not being below the rank of a Collector of a District, and the Chief Judge of every Presidency Small Cause Court (each as regards their or his own Court and the Courts, if any, subordinate thereto^(b)), may frame and publish lists of persons proved to their or his satisfaction, by evidence^(c) of general repute or otherwise, habitually to act as touts^(d), and may, from time to time, alter and amend such lists.

Power to frame and publish lists of touts.

Leg. Changes:—[1] Substituted by Act XI of 1896.

Case-law:—(a) A District Munsif cannot declare a person to be a tout, 12 M.L.T. 411; he can only inquire into the matter and report to District Court, *ibid*; power of holding inquiry or taking evidence cannot be delegated to subordinate officer, 6 C.W.N. 259; 12 C.W.N. 843 (Note); 15 Ind. Cas. 654. (b) And as regards no other Court, 26 M. 596. (c) *I.e.*, Legal evidence, 12 M.L.T. 259 = (1912) M.W.N. 959; 4 C.W.N. 86; mere report of bar association is not evidence, *ibid*; Court may act upon affidavits, though it would be more satisfactory to examine deponents as witnesses, 26 M. 596; mere admission of a person that he is a tout, not sufficient, 28 Ind. Cas. 918; as to sufficiency of evidence, see, also, 120 P.L.R. 1909; 27 P.W.R. 1909, Or.; 15 C.W.N. 1000; evidence to be given in presence of accused, 112 P.L.R. 1912 = 15 Ind. Cas. 307; inference from seeing a person canvassing and introducing litigants to members of the bar, 16 A.L.J. 76. (d) *I.e.*, As defined in S. 3 of the Act, 5 Bom. L.R. 728; as to power of High Court or Chief Court, to revise order under section, see 31 A. 69; 21 A. 181; 9 A. 104; 3 P.R. 1900; 11 P.R. 1909, Or.; 18 P.R. 1914, Or.; 120 P.L.R. 1909.

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(2) No person's name shall be included in any such list until he shall have had an opportunity ^(a) of showing cause against such inclusion.

(3) A copy of every such list shall be kept hung up in every Court to which the same relates.

(4) The Court or Judge may, by general or special order, exclude from the precincts of the Court any person whose name is included in any such list.

(5) Every person whose name is included in any such list shall be deemed to be proclaimed as a tout within the meaning of section 13, clause (e), and section 22, clause (d).

CHAPTER VIII.

MISCELLANEOUS.

37. To facilitate the ascertainment of the qualifications mentioned in sections 6 and 17 respectively, the Local Government shall, from time to time, appoint persons to be examiners for the purposes aforesaid, and may, from time to time, make regulations for conducting such examinations.

Local Government
to appoint examiners.

38. Except as provided by sections 4, 5, [1] 17, 16, [1] 25, 27, 32 and 36, nothing in this Act applies to Advocates, Vakils and Attorneys admitted and enrolled by any High Court under the Letters Patent by which such Court is constituted, or to Mukhtars practising in such Court or to Advocates enrolled [2] under section 41 of this Act [2].

Exemption of
High Court practitioners from certain parts of Act.

39. When any person who holds a certificate as a Mukhtar under section 7 and a certificate as a Revenue-agent under section 18 is suspended or dismissed in one of such capacities, he shall be deemed to be suspended or dismissed, as the case may be, also in the other.

Suspension or dismissal of person holding Mukhtar and Revenue-agent's certificates.

40. Notwithstanding anything hereinbefore contained, no Pleader, Mukhtar or Revenue-agent shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending ^(b) himself before the Authority suspending or dismissing him.

Pleaders, etc., not to be suspended or dismissed without being heard.

[2] 41. (1) A High Court not established by Royal Charter may, from time to time, with the previous sanction of the Local Government, make rules as to the qualifications and admission ^(c) of proper persons to be advocates of the Court, and, subject to such rules, may enrol such and so many advocates as it thinks fit.

Power for certain High Courts to enrol advocates.

Leg. Changes :—[1] Added by Act I of 1908. [2] Substituted by Act IX of 1884.

Case-law :—(a) See A.W.N. (1896) 107; 12 C.W.N. 842. (b) Even provisional suspension under S. 14 without giving opportunity to defend is illegal, 15 C.W.N. 269 = 13 C.L.J. 457. (c) A woman though otherwise qualified, not entitled to be enrolled as legal practitioner, 24 C.L.J. 382 = 21 C.W.N. 74.

(2) Every advocate so enrolled shall be entitled to appear for the suitors of the Court, and to plead or to act, or to plead and act, for those suitors, according as the Court may by its rules determine, and subject to those rules.

(3) The High Court may dismiss any advocate (a) so enrolled or suspend (b) him from practice.

(4) Provided that an advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him, and, except in the case of the Chief Court of the Punjab, [1] and the Chief Court of Lower Burma, [1] unless the order of the High Court dismissing or suspending him has been confirmed by the Local Government.

[2] 42. [3] So much of Chapter VI of Bombay Regulation II of 1827 as has not been repealed, [3] Act I of 1846 (*for amending the law regarding the appointment and remuneration of pleaders in the Courts of the East India Company*) and Act XX of 1853 (*to amend the law relating to pleaders in the Courts of the East India Company*) are repealed.

Repeal of Acts I of 1846 and XX of 1853.

FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and date of enactments.	Title.	Extent of repeal.
Act XX of 1865	... To amend the law relating to Pleaders and Mukhtars.	The whole.
Act XXIX of 1865	... To amend the Pleaders, Mukhtars and Revenue-agents Act, 1865.	So much as has not been repealed.
Act IX of 1866	... To extend to the Sadr Court of the North-Western Provinces certain provisions of "The Pleaders, Mukhtars and Revenue-agents Act, 1865," and of Act No. XXIX of 1865.	The whole.
Act IV of 1876	... To authorise Revenue-agents to practise in certain suits in the Munsif's Courts of the Lower Provinces of Bengal.	The whole.
Act XVII of 1877	... The Punjab Courts Act, 1877	... Sections 42, 43, 44 and 45.

Leg. Changes:—[1] Inserted by Act VI of 1900. [2] Added by Act IX of 1884. [3] Inserted by Act I of 1903.

Case-law:—(a) Though he may be a member of English Bar, 29 A. 95 (P.C.). (b) *E.g.*, for casting imputations on Court, (1903) L.B.R. 180 (F.B.); or libelling Court in a newspaper, 29 A. 95 (P.C.).

SECOND SCHEDULE.

VALUE OF STAMPS FOR CERTIFICATES.

(See section 25.)

I.

For a certificate authorising the holder to practise as a Pleader—

- (a) In the High Court and any subordinate Court—rupees fifty :
- (b) In any Court of Small Causes in a Presidency-town—rupees twenty-five :
- (c) In all other subordinate Courts—rupees twenty-five :
- (d) In the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildars, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees fifteen :
- (e) In the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

II.

For a certificate authorising the holder to practise as a Mukhtar—

- (f) In the High Court and any subordinate Court—rupees twenty-five :
- (g) In any Court of Small Causes in a Presidency-town—rupees fifteen :
- (h) In all other subordinate Courts—rupees fifteen :
- (i) In the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildars, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees ten :
- (j) In the Courts of Munsifs (a) and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

III.

For a certificate authorising the holder to practise as a Revenue-agent—

- (k) In the office of the Chief Controlling Revenue-authority and in any Revenue-office subordinate to such Authority—rupees fifteen :
- (l) In the office of a Commissioner and in any Revenue-office subordinate to a Commissioner—rupees ten :
- (m) In the office of a Collector and in any Revenue-office subordinate to a Collector—rupees five.

Case-law :—(a) Five-rupee stamp sufficient for certificate to practice before Munsifs exercising Small Cause powers only, 1 C.W.N. 118.

THE LEPERS ACT, 1898.

(ACT III OF 1898.)

[Passed on the 4th February, 1898.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1898	III	Lepers	... Rep. in pt., Act I of 1903. Am., Act XIII of 1903.

An Act to provide for the segregation and medical treatment of pauper lepers and the control of lepers following certain callings.

WHEREAS it is expedient to provide for the segregation and medical treatment of pauper lepers and the control of lepers following certain callings; It is hereby enacted as follows:—

Title, extent and commencement. 1. (1) This Act may be called the Lepers Act, 1898.

(2) It extends to the whole of British India, inclusive of * * *[1] British Baluchistan, the Santbal Parganas and the Pargana of Spiti; but

(3) It shall not come into force in any part thereof until the Local Government, as hereinafter provided, has declared it applicable thereto.

(4) The Local Government may, by notification in the official Gazette, apply this Act or any part thereof to the whole or any portion of the territories for the time being under its administration, and may in like manner amend or cancel any such notification.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "leper" means any person suffering from any variety of leprosy in whom the process of ulceration has commenced;

(2) "pauper leper" means a leper—

(a) who publicly solicits alms or exposes or exhibits any sores, wounds, bodily ailment or deformity with the object of exciting charity or of obtaining alms, or

(b) who is at large without any ostensible means of subsistence;

(3) "leper asylum" means a leper asylum appointed under section 3;

(4) "Board" means a Board constituted under section 5; and

(5) "District Magistrate" includes a Chief Presidency Magistrate.

3. The Local Government may, by notification in the official Gazette, appoint any place to be a leper asylum for the purposes of this Act and specify the local areas from which lepers may be sent to such asylum, and may, in like manner, alter or cancel any such notification.

Appointment of leper asylums by Local Government.

Leg. Changes:—[1] The words "Upper Burma" were repealed by Burma Laws Act XIII of 1898.

4. Subject to any rules which may be made under section 16, the Local Government may appoint any Medical Officer of the Government or other qualified medical man to be an Inspector of Lepers and any person to be a Superintendent of a Leper Asylum, with such establishment as may, in its opinion, be necessary, and every Inspector or Superintendent so appointed shall be deemed to be a public servant.

5. The Local Government shall constitute for every leper asylum appointed under section 3 a Board consisting of not less than three members, one of whom at least shall be a Medical Officer of the Government.

6. (1) Within any local area which has been specified under section 3 any police-officer may arrest without a warrant any person who appears to him to be a pauper leper.

(2) Such police-officer shall forthwith take or send the person so arrested to the nearest convenient police-station.

7. Every person brought to a police-station under the last foregoing section shall, without unnecessary delay, be taken before an Inspector of Lepers, who—

(a) if he finds that such person is not a leper within the meaning of section 2, shall give him a certificate in Form A set forth in the schedule, whereupon such person shall be forthwith released from arrest ;

(b) if he finds that such person is a leper within the meaning of section 2, shall give to the police-officer, in whose custody the leper is, a certificate in Form B set forth in the schedule, whereupon the leper shall, without unnecessary delay, be taken before a Magistrate having jurisdiction under this Act.

8. (1) If it appears to any Presidency Magistrate or Magistrate of the first class or to any other Magistrate authorised in this behalf by the Local Government, upon the certificate in Form B set forth in the schedule, that any person is a leper, and if it further appears to the Magistrate that the person is a pauper leper, he may, after recording the evidence on the above-mentioned points, and his order thereon, send the pauper leper in charge of a police-officer, together with an order in Form C set forth in the schedule, to a leper asylum, where such leper shall be detained until discharged by order of the Board or the District Magistrate :

Provided that, if the person denies the allegation of leprosy, the Magistrate shall call and examine the Inspector of Lepers, and shall take such further evidence as may be necessary to support or to rebut the allegation that the person is a leper, and may for this purpose adjourn the enquiry from time to time, remanding the person for observation or for other reason to such place as may be convenient, or admitting him to bail :

X of 1882.

Provided also that if any friend or relative of any person found to be a pauper leper shall undertake in writing to the satisfaction of the Magistrate that such pauper leper shall be properly taken care of and shall be prevented from publicly begging in any area specified under section 3, the Magistrate, instead of sending the leper to an asylum, may make the leper over to the care of such friend or relative, requiring him, if he thinks fit, to enter into a bond with one or more sureties, to which the provisions of section 514 of the Code of Criminal Procedure shall be applicable.

(2) If the Magistrate finds that such person is not a leper, or that, if a leper, he is not a pauper leper, he shall forthwith discharge him.

Power to prohibit lepers from following certain trades and doing certain acts.

9. (1) The Local Government may, by notification in the official Gazette, order that no leper shall, within any area specified under section 3,—

- (a) personally prepare for sale or sell any article of food or drink or any drugs or clothing intended for human use ; or
- (b) bathe, wash clothes or take water from any public well or tank debarred by any municipal or local bye-law from use by lepers ; or
- (c) drive, conduct or ride in any public carriage plying for hire other than a railway carriage ; or
- (d) exercise any trade or calling which may by such notification be prohibited to lepers.

(2) Any such notification may comprise all or any of the above prohibitions.

(3) Whoever disobeys any order made pursuant to the powers conferred by this section shall be punishable with fine which may extend to twenty rupees :

Provided that, when any person is accused of an offence under this section, the Magistrate before whom he is accused shall cause him to be examined by an Inspector of Lepers, and shall not proceed with the case unless such Inspector furnishes a certificate, in Form B set forth in the schedule, in respect of such person.

10. (1) Whenever any leper who has been convicted of an offence punishable under the last foregoing section is again convicted of any offence punishable under that section, the Magistrate may, in addition to, or in lieu of, any punishment to which such leper may be liable, require him to enter into a bond, with one or more sureties, binding him to depart forthwith from the local area specified under section 3 in which he is, and not to enter that or any other local area so specified until an Inspector of Lepers shall have given him a certificate in Form A set forth in the schedule.

(2) If any such leper fails to furnish any security required under sub-section (1), the Magistrate may send him in charge of a police-officer, with an order in Form D set forth in the schedule, to a leper asylum,

where such leper shall be detained until discharged by order of the Board or the District Magistrate.

(3) The powers conferred by this section shall only be exercised by a Presidency Magistrate or Magistrate of the first class.

11. Any person who, within any area specified under section 3, knowingly employs a leper in any trade or calling prohibited by order under section 9 shall be punishable with fine which may extend to fifty rupees :

Penalty on person employing lepers in prohibited trade.

Provided that the alleged leper shall be produced before the Magistrate and the Magistrate shall cause him to be examined by an Inspector of Lepers, and shall not proceed with the case unless such Inspector furnishes a certificate in Form B set forth in the schedule in respect of such alleged leper.

12. Whosoever, having been sent to a leper asylum under an order of a Magistrate in Form C or Form D set forth in the schedule, escapes from, or leaves, the asylum without the permission in writing of the Superintendent thereof, may be arrested by any police-officer without a warrant, and upon arrest shall be forthwith taken back to the leper asylum.

Re-arrest of escaped lepers.

13. Two or more members of the Board, one of whom shall be the Medical Officer, shall, once at least in every three months, together inspect the leper asylum for which they are constituted, and see and examine (a) every leper therein admitted since the last inspection, together with the order for his admission, and (b), as far as circumstances will permit, every other leper therein, and shall enter in a book to be kept for the purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the lepers therein.

Inspection by Board.

14. Any two members of the Board, one of whom shall be the Medical Officer, may at any time, by an order in writing in Form E set forth in the schedule and signed by them, direct the discharge from the leper asylum of any leper detained therein under the provisions of this Act.

Order of discharge by Board.

15. Any person, other than a pauper leper, in respect of whom an Inspector of Lepers has issued a certificate, in Form B set forth in the schedule, declaring him to be a leper, or has refused to issue a certificate in Form A set forth in the schedule, may appeal against the issue or refusal of any such certificate to such officer as may be appointed by the Local Government in this behalf, and the decision of such officer shall be final.

Appeals.

16. The Local Government may, by notification in the official Gazette, make rules generally for carrying out the purposes of this Act, and in particular—

Power of the Local Government to make rules.

(a) for the guidance of all or any of the officers discharging any duty under this Act; and

- (b) for the management of, and the maintenance of discipline in, a leper asylum.

Power to local authorities to expend funds and appropriate property to asylums.

17. Notwithstanding anything in any enactment with respect to the purposes to which the funds or other property of a local authority may be applied, any local authority may—

- (a) establish or maintain, or establish and maintain, or contribute towards the cost of the establishment or maintenance or the establishment and maintenance of, a leper asylum either within or without the local limits of such local authority ;
- (b) with the previous sanction of the Local Government and subject to such conditions as that Government may prescribe, appropriate any immoveable property vested in, or under the control of, such body, as a site for, or for use as, a leper asylum.

Protection to persons acting *bona fide* under Act.

18. No suit, prosecution or other legal proceeding shall lie against any officer or person in respect of anything in good faith done or intended to be done under, or in pursuance of, the provisions of this Act.

19. The Governor (General in Council may, by notification in the Gazette of India, direct that any leper or class of lepers, with respect to whom an order for segregation and medical treatment has been made by a Magistrate having jurisdiction within the territories of any Native Prince or State in India, may be sent to any leper-asylum specified in such order; and thereupon the provisions of this Act and of any rules made thereunder shall, with such modifications not affecting the substance as may be reasonable and necessary to adapt them to the subject-matter, apply to any leper sent to a leper-asylum in pursuance of such notification as though he had been sent by the order of a Magistrate having jurisdiction under this Act.

SCHEDULE.

A.—CERTIFICATE.

(Section 7.)

I, THE undersigned (*here enter name and official designation*), hereby certify that I on the day of at personally examined (*here enter name of person examined*) and that the said is not a leper as defined by the Lepers Act, 1898.

Given under my hand this day of 189 .

(Signature)
Inspector of Lepers.

B.—CERTIFICATE.

(Section 7.)

I, THE undersigned (*here enter name and official designation*), hereby certify that I on the day of at personally examined (*here enter name of leper*), and that the said

is a leper as defined by the Lepers Act, 1898, and that I have formed this opinion on the following grounds, namely,—

(Here state the grounds.)

Given under my hand this day of 189 .

(Signature)

Inspector of Lepers.

C.—WARRANT OF DETENTION.

(Section 8.)

To

THE SUPERINTENDENT OF THE LEPER ASYLUM AT

WHEREAS it has been made to appear to me that (name and description) is a pauper leper as defined in the Lepers Act, 1898:

This is to authorise you, the said Superintendent, to receive the said into your custody together with

this order and ^{him}_{her} safely to keep in the said asylum until ^{he}_{she} shall be discharged by order of the Board or the District Magistrate.

Given under my hand and the seal of the Court this
day of 189 .

Seal.

(Signature)

Magistrate.

D.—WARRANT OF DETENTION.

(Section 10.)

To

THE SUPERINTENDENT OF THE LEPER ASYLUM AT

WHEREAS (*name and description*) has this day been convicted by me of an offence punishable under section 9 of the Lepers Act, 1898, and whereas it has been proved before me that the said (*name and description*) was previously convicted of an offence punishable under the same section :

This is to authorise you, the said Superintendent, to receive the said _____ into your custody together with this

order and ^{him}_{er} safely to keep in the said asylum until ^{he}_{she} shall be discharged by order of the Board or the District Magistrate.

Given under my hand and the seal of the Court this
day of 189 .

Seal.

(Signature)

Magistrate.

Letters Patent (All.) LETTERS PATENT (ALLAHABAD).

E.—ORDER OF DISCHARGE BY BOARD.*
(Section 14.)

To

THE SUPERINTENDENT OF THE LEPER ASYLUM AT .

WHEREAS (*name and description*) was committed to your custody under an order dated the day of 189 and there have appeared to us sufficient grounds for the opinion that ^{he}_{she} can be released without hazard or inconvenience to the community :

This is to authorise and require you forthwith to discharge the said (*name*) from your custody.

Given under our hands this day of 189 .
(Signatures)
Members of the Asylum Board.

LETTERS PATENT (ALLAHABAD).

Establishing a High Court in the North-Western Provinces of the Bengal Presidency, dated 17th March, 1866.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. To
Recital of Acts 24
& 25 Vict., c. 104. all to whom these presents shall come, greeting :
Whereas by an Act of Parliament passed in the twenty-fourth and twenty-fifth years of Our reign, entitled "An Act for establishing High Courts of Judicature in India," it was, amongst other things, enacted that it shall be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William in Bengal, for the Bengal Division of the Presidency of Fort William, aforesaid, and that such High Court should consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty might, from time to time, think fit to appoint, who shall be selected from among persons qualified as in the said Act is declared : Provided always that the persons who at the time of the establishment of such High Court were Judges of the Supreme Court of Judicature and permanent Judges of the Court of Sudder Dewany Adawlut or Sudder Adawlut of the same Presidency, should be and become Judges of such High Court without further appointment for that purpose, and the Chief Justice of such Supreme Court should become the Chief Justice of such High Court, and that, upon the establishment of such High Court as aforesaid, the Supreme Court and the Court of Sudder Dewany Adawlut and Sudder Nizamut Adawlut at Calcutta, in the said Presidency, should be abolished :

And that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate and matrimonial jurisdiction, original and appellate, and all such powers and authority for, and in relation to, the administration of justice in the said Presidency as Her Majesty might, by

* A corresponding form may be used by the District Magistrate for orders of discharge issued under S. 10 (2).

such Letters Patent as aforesaid, grant and direct, subject, however, to such directions and limitations as to the exercise of original, civil and criminal jurisdiction beyond the limits of the Presidency town as might be prescribed thereby : and save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor General of India in Council, the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last-mentioned Courts :

And whereas it is further declared by the said recited Act that it shall be lawful for Us by Letters Patent, to erect, and establish a High Court of Judicature in and for any portion of the territories, within Her Majesty's dominions in India, not included within the limits of the local jurisdiction of another High Court, to consist of a Chief Justice and such number of other Judges, with such qualifications as were by the same Act required in persons to be appointed to the High Courts, established at the said Presidencies, as We from time to time might think fit and appoint ; and that, subject to the directions of the Letters Patent, all the provisions of the said recited Act, relative to High Courts and to the Chief Justice and other Judges of such Courts, and to the Governor General or Governor of the Presidency, in which such High Courts were established, shall, as far as circumstances may permit, be applicable to any new High Court which may be established in the said territories, and to the Chief Justice and other Judges thereof, and to the persons administering the Government of the said territories ;

And whereas We did, upon full consideration of the premises, think fit to erect and establish, and by Our Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, the fourteenth day of May, in the twenty-fifth year of Our reign, in the year of Our Lord one thousand eight hundred and sixty-two, did accordingly, for Us, Our heirs and successors, erect and establish, at Fort William in Bengal, for the Bengal Division of the Presidency of Fort William, aforesaid, a High Court of Judicature which should be called the High Court of Judicature at Fort William in Bengal, and did thereby constitute the said Court to be a Court of Record :

1. Now know ye that We, upon full consideration of the premises, and of Our special grace, certain knowledge, and mere motion, have thought fit to erect and establish, and by these presents We do accordingly, for Us, Our heirs and successors, erect and establish, for the North-Western Provinces of the Presidency of Fort William aforesaid, a High Court of Judicature, which shall be called the High Court of Judicature, for the North-Western Provinces, and We do hereby constitute the said Court to be a Court of Record.

Establishment of
High Court for the
North-Western Pro-
vinces.

2. And We do hereby appoint and ordain that the said High Court of Judicature for the North-Western Provinces shall, until further or other provision shall be made by Us, or Our heirs and successors in that behalf, in accordance with the said recited Act, consist of a Chief

Constitution and
first Judges of the
High Court.

Justice and five Judges (a), the first Chief Justice being Walter Morgan, Esquire, and the five Judges being Alexander Ross, Esquire, William Edwards, Esquire, William Roberts, Esquire, Francis Boyle Pearson, Esquire, and Charles Arthur Turner, Esquire, being respectively qualified, as in the said Act is declared.

3. And We do hereby ordain that the Chief Justice and every Judge of the said High Court of Judicature, for the North-Western Provinces, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Governor General in Council may commission to receive it :—

"I, A. B., appointed Chief Justice [or a Judge] of the High Court of Judicature, for the North-Western Provinces, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment."

4. And We do hereby grant, ordain, and appoint that the said High Court shall have and use, as occasion may require, a seal bearing a device and impression of Our Royal Arms, within an exergue or label surrounding the same, with this inscription : "The Seal of the High Court for the North-Western Provinces." And We do further grant, ordain, and appoint that the said Seal shall be delivered to and kept in the custody of the Chief Justice, and in case of vacancy of the office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice under the provisions of section 7 of the said recited Act ; and We do further grant, ordain, and appoint that, whensoever it shall happen that the office of Chief Justice or of the Judge to whom the custody of the said Seal be committed shall be vacant, the said High Court shall be and is hereby authorized and empowered to demand, seize, and take the said Seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her, or their possession.

5. And We do hereby further grant, ordain, and appoint that all writs, summons, precepts, rules, orders, and other mandatory process to be used, issued, or awarded by the said High Court of Judicature for the North-Western Provinces, shall run and be in the name and style of Us, or of Our heirs and successors, and shall be sealed with the Seal of the said High Court.

6. And We do hereby authorize and empower the Chief Justice of the said High Court of Judicature for the North-Western Provinces, from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Governor General in Council, to appoint so many and such clerks and other ministerial officers as shall be found

Case-law :—(a) Constitution of Court not rendered illegal by omission to fill up vacancy, 9 A. 625 ; or by appointment of a sixth Judge, 36 A. 168 (F.B.) = 12 A.L.J. 231.

necessary for the administration of justice, and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And We do hereby ordain that every such appointment shall be forthwith submitted to the approval of the Lieutenant-Governor of the North-Western Provinces, and shall be either confirmed or disallowed by the said Lieutenant-Governor. And it is Our further will and pleasure, and We do hereby, for Us, Our heirs and successors, give, grant, direct, and appoint that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall, from time to time, appoint for each office and place respectively, and as the Lieutenant-Governor of the North-Western Provinces, subject to the control of the Governor-General in Council, shall approve of: Provided always, and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court so long as they shall hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed by the Governor-General in Council, and to absent himself from the said limits during the term of such leave, in accordance with the said rules.

Admission of Advocates, Vakeels and Attorneys.

7. And We do hereby authorize and empower the said High Court of Judicature for the North-Western Provinces to approve, admit, and enrol such and so many Advocates, Vakeels, and Attorneys as to the said High Court shall seem meet; and such Advocates, Vakeels, and Attorneys shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions.

8. And We do hereby ordain that the said High Court of Judicature for the North-Western Provinces shall have power to make rules for the qualification ^(a) and admission of proper persons to be Advocates, Vakeels and Attorneys-at-law of the said High Court and shall be empowered to remove or to suspend from practice on reasonable cause ^(b) the said Advocates, Vakeels or Attorneys-at-law; and no person whatsoever but such Advocates, Vakeels, or Attorneys shall be allowed to act or plead, for or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed, to appear, plead, or act on his own behalf, or on behalf of a co-suitor.

* * * * *

Case-law:—(a) See notes under cl. 10, Calcutta and Madras Letters Patents. (b) *E.g.*, publication by pleader of libel against Judges in a paper edited by him, 29 A. 95 (P.C.); request by High Court vakil to motussil vakil to send up cases to him in consideration of a share of fees, 22 I.A. 193; conviction of offence under S. 417, I.P.C.; for other instances, see notes under cl. 10, Calcutta and Madras Letters Patents; in proceeding under clause based on conviction for offence, pleader can't show that he is not guilty of the offence, 18 A. 174 (F.B.); 22 A. 49 (P.C.); but may show that offence was not such as to justify removal or suspension from practice, *ibid.*

10 And We do further ordain that an appeal ^(a) shall lie to the said High Court of Judicature for the North-Western Provinces from the judgment ^(b) (not being a sentence or order passed or made in any criminal trial) of one Judge of the said High Court, or of one Judge of any Division Court, pursuant to section 13 of the said recited Act, and that an appeal shall also lie to the said High Court from the judgment (not being a sentence or order as aforesaid) of two or more Judges of the said High Court, or of such Division Court, whenever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being ; but that the right of appeal from other judgments of Judges of the said High Court, or of such Division Court, shall be to Us, Our heirs or successors, in Our or Their Privy Council, as hereinafter provided.

* * * *

Criminal jurisdiction.

15. (c) And We do further ordain that the said High Court of Judicature, for the North-Western Provinces shall have ordinary original criminal jurisdiction in respect of all such persons within the said Provinces as the High Court of Judicature at Fort William in Bengal, shall have criminal jurisdiction over at the date of the publication of these presents ; and the criminal jurisdiction of the said last-mentioned High Court over such persons shall cease at such date : Provided, nevertheless, that criminal proceedings which shall at such date have been commenced in the said last-mentioned High Court shall continue as if these presents had not been issued.

16. And We do further ordain that the said High Court of Judicature, for the North-Western Provinces, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

17. And We do further ordain that the said High Court of Judicature, for the North-Western Provinces, shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the Sudder Nizamut Adawlut, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any Magistrate or other officer specially empowered by the Government in that behalf.

Case-law :—(a) Does not lie on grounds not urged in lower Court, 20 A. 258 ; 1 Pat. L.J. 485 = 20 C.W.N. 1303. (b) Order sanctioning prosecution under S. 195, Cr. P.C., is not a judgment, 39 A. 147 = 14 A.L.J. 1230 ; see, also, 17 Cr. L.J. 537 = 36 Ind. Cas. 585 ; but see 12 M L J. 408 and 32 C. 379, *contra* ; for further notes *vide* cl. 15 of Calcutta, Madras and Bombay Letters Patents. (c) See notes under cl. 22, Madras Letters Patent.

18.(a) And We do further ordain that there shall be no appeal to the said High Court, from any sentence or order passed or made in any criminal trial before the Courts of original criminal jurisdiction, which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

No appeal from High Court exercising original jurisdiction.

Court may reserve points of law.

19.(b) And We do further ordain that, on such point or points of law being so reserved as aforesaid, the said High Court shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right.

High Court to review cases on points of law reserved by one or more Judges of the said High Court.

20 And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall be a Court of Appeal from the Criminal Courts of the said Provinces, and from all other Courts from which there is now an appeal to the Court of Sudder Nizamut Adawlut for the said Provinces, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said Court of Sudder Adawlut by virtue of any law now in force.

Appeals from Criminal Courts in the Provinces.

21.(c) And We do further ordain that the said High Court shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges or by any other Officers now authorized to refer cases to the Court of Sudder Nizamut Adawlut of the North-Western Provinces, and to revise all such cases tried by any Officer or Court possessing criminal jurisdiction, as are now subject to reference or to revision by the said Court of Sudder Nizamut Adawlut.

Hearing of referred cases, and revision of criminal trials.

22.(d) And We do further ordain that the said High Court shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any Officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other Officer or Court.

High Court may direct the transfer of a case from one Court to another.

Case-law :—(a) See notes under cl. 25, Madras and Bombay Letters Patents. (b) See notes under cl. 26, Bombay, Calcutta and Madras Letters Patents. (c) See notes under cl. 28, Bombay and Calcutta Letters Patents. (d) See notes under cl. 29, Bombay, Calcutta and Madras Letters Patents.

Act under which punishments to be inflicted.

23. And We do further ordain that all persons brought for trial before the said High Court of Judicature for the North-Western Provinces either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of appeal, reference or revision, charged with any offence for which provision is made by Act No. XLV of 1860 called the "Indian Penal Code" or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts and not otherwise.

24. And We do further ordain that whenever it shall appear to the Lieutenant-Governor of the North-Western Provinces, subject to the control of the Governor General in Council, convenient that the jurisdiction and power by these Our Letters Patent, or by the recited Act, vested in the said High Court, should be exercised in any place within the jurisdiction of any Court, now subject to the Superintendence of any Sudder Dewany Adawlut or the Sudder Nizamut Adawlut of the North-Western Provinces, other than the usual places of sitting of the said High Court, or at several such places by way of circuit, the proceedings in cases before the said High Court, at such place or places, shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

* * * *

Powers of Single Judges and Division Courts.

27. And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature for the North-Western Provinces, in the exercise of its original or appellate (a) jurisdiction, may be performed by any Judge or by any Division Court thereof, appointed or constituted for such purpose under the provisions of the thirteenth section of the aforesaid Act of the twenty-fourth and twenty-fifth years of Our reign; and if such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority: but if the Judges should be equally divided, then the opinion of the senior Judge (b) shall prevail.

* * * *

Criminal Procedure.

29. And We do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court, in the exercise of its ordinary original criminal jurisdiction, shall be regulated by the procedure and practice which was in use in the High Court of Judicature for Fort William in Bengal, immediately before the publication of these presents,

Case-law:—(a) Jurisdiction includes revisional jurisdiction, 2 N.W.P. 117 (F.B.).
(b) Reference to third Judge not competent, *ibid.*; see, also, note under cl.36, Madras Letters Patent.

subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure, prescribed by an Act passed by the Governor General in Council, and being Act No. XXV of 1861, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

Appeals to Privy Council.

30. And We do further ordain that any person or persons may

Power to appeal. appeal to Us, Our heirs and successors, in Our or

Their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree or order (a) of the said High Court of Judicature for the North-Western Provinces, made on appeal, and from any final judgment, decree or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal shall not lie to the said High Court under the provision contained in the 10th clause of these presents: Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgment, decree, or order shall involve, directly or indirectly, some claim, demand or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal to Us, Our heirs or successors, in Our or Their Privy Council; subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council, from the Courts of the said Provinces, except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

31. And We do further ordain that it shall be lawful for the said

Appeal from inter-
locutory judgment.

High Court of Judicature for the North-Western Provinces, at its discretion on the motion, or if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order, or sentence of the High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or Their Privy Council, subject to the same rules, regulations, and limitations, as are herein expressed respecting appeals from final judgments, decrees, orders and sentences.

32.(b) And We do further ordain that, from any judgment, order, or

Appeal in criminal
cases, etc.

sentence, of the said High Court of Judicature for the North-Western Provinces, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court

Case-law :—(a) See notes under cl. 39, Bombay, Calcutta and Madras Letters Patents. (b) See notes under cl. 41, Bombay and Calcutta Letters Patents.

which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order, or sentence to appeal to Us, Our heirs or successors in Council: Provided the said High Court shall declare that the case is a fit one for such appeal and under such conditions as the said High Court may establish or require, subject always to such rules and orders as We may, with the advice of our Privy Council, hereinafter make in that behalf.

33. And We do further ordain that, in all cases of appeal made from any judgment, order, sentence, or decree of the said High Court of Judicature for the North-Western Provinces, to Us, Our heirs or successors, in Our or Their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors, in Our or Their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court, and that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or Their Privy Council a copy of the reasons ^(a) given by the Judges of such Court, or by any such Judges, for or against the judgment or determination appealed against.

And We do further ordain that the said High Court shall, in all cases of appeal to Us, Our heirs or successors, conform to and execute or cause to be executed, such judgments and orders as We, Our heirs or successors, in Our or Their Privy Council, shall think fit to make in the premises in such manner as any original judgment, decree, or decretal orders, or other order or rule of the said High Court, should or might have been executed.

Calls for Records, etc., by the Government.

34. And it is Our further will and pleasure that the said High Court of Judicature for the North-Western Provinces shall comply with such requisitions as may be made by the Government for records, returns, and statements in such form and manner as such Government may deem proper.

35. And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor General in Council, exercised at meetings for the purpose of making Laws and Regulations, and also of the Governor General in cases of emergency under the provisions of an Act of the twenty-fourth and twenty-fifth years of Our reign, chapter sixty-seven, and may be in all respects amended and altered thereby.

In witness whereof We have caused these Our Letters to be made Patent. Witness Ourselves at Westminster, the seventeenth day of March in the twenty-ninth year of Our reign.

By warrant under the Queen's Sign Manual.

(Signed) C. ROMILLY.

Case-law:—(a) Grounds of decision should be recorded and transmitted, 12 M.I.A. 495.

LETTERS PATENT (BOMBAY).

Letters Patent for the High Court of Judicature for the Presidency of Bombay, bearing date the 28th December, 1865.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. To all to whom these Presents shall come, greeting:
Recital of Acts 24
& 25 Vict., c. 104.

Whereas by an Act of Parliament passed in the Twenty-fourth and Twenty-fifth years of Our Reign, entitled "An Act for establishing High Courts of Judicature in India," it was, amongst other things, enacted that it should be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Bombay, for the Presidency of Bombay aforesaid, and that such High Court should consist of a Chief Justice and as many Judges, not exceeding fifteen as Her Majesty might, from time to time, think fit to appoint, who should be selected from among persons qualified as in the said Act is declared: Provided always that the persons who at the time of the establishment of such High Court were Judges of the Supreme Court of Judicature, and permanent Judges of the Court of Sudder Dewany Adawlut or Sudder Adawlut of the same Presidency, should be and become Judges of such High Court without further appointment for that purpose, and the Chief Justice of such Supreme Court should become the Chief Justice of such High Court, and that upon the establishment of such High Court as aforesaid, the Supreme Court and the Court of Sudder Dewany Adawlut and Sudder Foujdarry Adawlut at Bombay, in the said Presidency should be abolished:

And that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the said Presidency, as Her Majesty might, by such Letters Patent as aforesaid, grant and direct, subject, however, to such directions and limitations as to the exercise of original civil and criminal jurisdiction beyond the limits of the Presidency town as might be prescribed thereby; and save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor General of India in Council, the High Court so to be established should have and exercise all jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last-mentioned Courts:

And whereas We did, upon full consideration of the premises, think fit to erect and establish, and by Our Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the Twenty-sixth day of June in the Twenty-fifth Year of Our Reign, in the year of our Lord One thousand eight hundred and sixty-two, did accordingly, for Us, Our heirs and successors, erect and establish at Bombay, for the Presidency of Bombay aforesaid, a High Court of Judicature, which should be called the High Court of Judicature

at Bombay, and did thereby constitute the said Court to be a Court of Record; and whereas We did thereby appoint and ordain that the said High Court of Judicature at Bombay should, until further or other provision should be made by Us or Our heirs and successors in that behalf, in accordance with the recited Act, consist of a Chief Justice and six Judges, and did thereby constitute and appoint certain persons, being respectively qualified as in the said Act is declared, to be Judges of the said High Court: and whereas on the Sixth day of July One thousand eight hundred and sixty-three We did, in accordance with the provisions of the said recited Act, increase the number of the Judges of the said Court to a Chief Justice and seven Judges:

And whereas by the said recited Act it is declared lawful for Her Majesty, at any time within three years after the establishment of the said High Court, by Her Letters Patent, to revoke all, or such parts or provisions as Her Majesty might think fit of the Letters Patent by which such Court was established, and to grant and make such other powers and provisions as Her Majesty might think fit, and as might have been granted or made by such first Letters Patent:

And whereas by the Act of the Twenty-eighth year of Our Reign, chapter fifteen, entitled "An Act to extend the Term for granting fresh Letters Patent for the High Courts in India, and to make further provision respecting the territorial jurisdiction of the said Courts," the time for issuing fresh Letters Patent has been extended to the first of January One thousand eight hundred and sixty-six:

And whereas, in order to make further provision respecting the constitution of the said High Court, and the administration of justice thereby, it is expedient that the said Letters Patent dated the Twenty-sixth of June One thousand eight hundred and sixty-two should be revoked, and that some of the powers and provisions thereby granted and made should be granted and made with amendments and additional powers and provisions by fresh Letters Patent.

1. Now know ye that We, upon full consideration of the premises, and of Our special grace, certain knowledge, and mere motion have thought fit to revoke and do by these presents (from and after the date of the publication thereof as hereinafter provided and subject to the provisions thereof) revoke Our said Letters Patent of the Twenty-sixth of June One thousand eight hundred and sixty-two, except so far as the Letters Patent of the Fourth year of His Majesty King George the Fourth dated the Eighth day of December One thousand eight hundred and twenty-three establishing a Supreme Court of Judicature at Bombay were revoked or determined thereby.

2. And We do by these presents grant, direct and ordain that, notwithstanding the revocation of the said Letters Patent of the Twenty-sixth of June One thousand eight hundred and sixty-two, the High Court of Judicature called the High Court of Judicature at Bombay shall

High Court at
Bombay to be con-
tinued.

be and continue, as from the time of the original erection and establishment thereof, the High Court of Judicature at Bombay for the Presidency of Bombay aforesaid, and that the said High Court shall be and continue a Court of Record, and that all proceedings commenced in the said High Court prior to the date of the publication of these Letters Patent shall be continued and depend in the said High Court as if they had commenced in the said High Court after the date of such publication, and that all rules and orders in force in the said High Court immediately before the date of the publication of these Letters Patent shall continue in force except so far as the same are altered hereby, until the same are altered by competent authority.

3. And We do hereby appoint and ordain that the person and persons who shall immediately before the date of the publication of these Letters Patent be the Chief Justice and Judges, or acting Chief Justice or Judges, if any, of the said High Court of Judicature at Bombay shall continue to be the Chief Justice and Judges, or acting Chief Justice or Judges, of the said High Court, until further or other provision shall be made by Us or Our heirs and successors in that behalf, in accordance with the said recited Act for establishing High Courts of Judicature in India.

Judges of the said High Court to be continued

4. And We do hereby appoint and ordain that every clerk and ministerial officer of the said High Court of Judicature at Bombay appointed by virtue of the said Letters Patent of the Twenty-sixth of June One thousand eight hundred and sixty-two shall continue to hold and enjoy his office and employment, with the salary thereunto annexed, until he be removed from such office and employment; and he shall be subject to the like power of removal, regulations, and provisions as if he were appointed by virtue of these Letters Patent.

Clerks, etc., of the said High Court to be continued.

5. And We do hereby ordain that the Chief Justice and every Judge who shall be from time to time appointed to the said High Court of Judicature at Bombay, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Governor in Council may commission to receive it:—

Declaration to be made by Judges.

"I, A. B., appointed Chief Justice [or a Judge] of the High Court of Judicature at Bombay, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge, and judgment."

6. And We do hereby grant, ordain, and appoint that the said High Court of Judicature at Bombay shall have, and use as occasion may require, a seal bearing a device and impression of Our Royal Arms, within an exergue or label surrounding the same, with this inscription:—"The Seal of the High Court at Bombay." And We do further grant, ordain, and appoint that the said seal shall be delivered to and kept in the custody of the Chief Justice and in case of vacancy of the office of Chief Justice or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice, under the provisions of

Seal.

section seven of the said recited Act; and We do further grant, ordain, and appoint that whensoever it shall happen that the office of Chief Justice, or of the Judge to whom the custody of the said seal be committed, shall be vacant the said High Court shall be and is hereby authorised and empowered to demand, seize, and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her, or their possession.

7. And We do hereby further grant, ordain, and appoint that all
Writes, etc., to issue in name of the Crown and under Seal. writes, summons, precepts, rules, orders, and other mandatory process to be used, issued, or awarded by the said High Court of Judicature at Bombay shall run and be in the name and style of Us, or of Our heirs and successors, and shall be sealed with the seal of the said High Court.

8. And We do hereby authorise and empower the Chief Justice of
Appointment of officers. the said High Court of Judicature at Bombay from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Governor in Council, to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice, and the due execution of all the powers and authorities granted and committed to the said High Court by these our Letters Patent. And We do hereby ordain that every such appointment shall be forthwith submitted to the approval of the Governor in Council, and shall be either confirmed or disallowed by the Governor in Council. And it is Our further will and pleasure, and We do hereby, for Us, Our heirs and successors, give, grant, direct, and appoint that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall from time to time appoint for each office and place respectively, and as the Governor in Council, subject to the control of the Governor General in Council, shall approve of: Provided always, and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court so long as they shall hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed by the Governor in Council, and to absent himself from the said limits during the term of such leave in accordance with the said rules.

Admission of Advocates, Vakeels, and Attorneys.

9. And We do hereby authorise and empower the said High Court
Powers of High Court in admitting Advocates, Vakeels, and Attorneys. of Judicature at Bombay to approve, admit, and enrol such and so many Advocates, Vakeels, and Attorneys as to the said High Court shall seem meet; and such Advocates, Vakeels, and Attorneys shall be and are hereby authorised to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors according as the said High Court may by its rules and directions determine, and subject to each rules and directions.

10. And We do hereby ordain that the said High Court of Judicature at Bombay shall have power to make rules for the qualification^(a) and admission of proper persons to be Advocates, Vakeels and Attorneys-at-law of the said High Court and shall be empowered to remove or to suspend from practice on reasonable cause^(b), the said Advocates, Vakeels or Attorneys-at-law, and no person whatsoever but such Advocates, Vakeels, or Attorneys shall be allowed to act or to plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed, to appear, plead, or act on his own behalf, or on behalf, of a co-suitor.

In making rules for the qualifications, etc., of Advocates, Vakeels, and Attorneys.

Civil Jurisdiction of the High Court.

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15. And We do further ordain that an appeal^(c) shall lie to the said High Court of Judicature at Bombay from the judgment^(d) (not being a sentence or order passed or made in any criminal trial^(e)) of one Judge of said High Court, or of one Judge of any Division Court, pursuant to section thirteen of the said recited Act; and that an appeal shall also lie to the said High Court from the judgment, not being a sentence or order as aforesaid, of two or more Judges of the said High Court, or of such Division Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being; but that the right of appeal from other judgments of Judges of the said High Court, or of such Division Court, shall be to Us, Our heirs or successors, in Our or Their Privy Council, as hereinafter provided.

Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction.

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Criminal Jurisdiction.

22.^(f) And We do further ordain that the said High Court of Judicature at Bombay shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction, and also in respect of all such persons beyond such limits over whom the said High Court of Judicature at Fort William in Bengal shall have criminal jurisdiction at the date of the publication of these presents.

Ordinary original jurisdiction of the High Court.

23. And We do further ordain that the said High Court of Judicature at Bombay, in the exercise of its ordinary original criminal jurisdiction shall be empowered to try all persons brought before it in due course of law.

Jurisdiction as to persons.

Case-law :—(a) See notes under cl. 10, Calcutta and Madras Letters Patents. (b) See notes under cl. 8, Allahabad Letters Patent, and cl. 10, Calcutta and Madras Letters Patents. (c) See notes under cl. 10, Allahabad Letters Patent, and cl. 15, Calcutta and Madras Letters Patents. (d) Order committing for contempt is a judgment, 7 B. 5; complainant can't appeal against order of discharge by Presidency Magistrate. Rat. Un. Cr. C. 385; see, also, notes under cl. 10, Allahabad Letters Patent, and cl. 15, Madras and Calcutta Letters Patents. (e) See notes under cl. 15, Madras Letters Patent. (f) See notes under cl. 22, Madras Letters Patent.

24. And We do further ordain that the said High Court of Judicature at Bombay shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence ^(a) of the said High Court, and shall have authority to try at its discretion any such person brought before it on charges preferred by the Advocate-General, or by any Magistrate or other officer specially empowered by the Government in that behalf.

25. And We do further ordain that there shall be no appeal to the said High Court of Judicature at Bombay from any sentence or order passed or made in any criminal trial before the Court of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion ^(b) of any such Court to reserve ^(c) any point or points of law for the opinion of the said High Court.

26. And We do further ordain that on such point or points of law being so reserved as aforesaid, or on its being certified ^(d) by the said Advocate-General that, in his judgment, there is an error ^(e) in the decision of a point or points of law decided by the Court of original criminal jurisdiction, or that a point or points of law which has or have been decided by the said Court should be further considered, the said High Court shall have full power and authority to review ^(f) the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right.

27. And We do further ordain that the said High Court of Judicature at Bombay shall be a Court of appeal from the Criminal Courts of the Presidency of Bombay and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any law now in force.

28. And We do further ordain that the said High Court of Judicature at Bombay shall be a Court of reference ^(g) and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Session

Case-law :—(a) Court of Judicial Superintendent of Railways in Nizam's Dominions is not subject to superintendence of Bombay High Court, 9 B. 288 (F.B.) (b) Exercise of discretion not open to review under cl. 26, 10 B.H.C. 75. (c) No power to reserve in case of mere non-direction to jury, 10 B.H.C. 75. (d) Certificate not to be granted in case of mere non-direction, 10 B. H. C. 75; see notes under cl. 26, Calcutta Letters Patent. (e) See notes under cl. 26, Calcutta Letters Patent. (f) On point of law reserved as to admissibility of evidence, Court can review whole case, 2 B. 61; 32 B. 111 (F.B.)—9 Bom. L.R. 789; see, also, notes under cl. 26, Madras and Calcutta Letters Patents. (g) See notes under cl. 28, Calcutta Letters Patent.

S. 33 LETTERS PATENT (BOMBAY). Letters Patent (Bombay)

Judges, or by any other officers now authorised to refer cases to the said High Court, and to revise all such cases ^(a) tried by any officer or Court possessing criminal jurisdiction as are now subject to reference to or revision by the said High Court.

29. And We do further ordain that the said High Court shall have power to direct the transfer of any criminal case ^(b) or appeal from any Court to any other Court of equal or superior jurisdiction ^(c), and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court.

Criminal Law.

30. And We do further ordain that all persons brought for trial before the said High Court of Judicature at Bombay, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of appeal, reference or revision, charged with any offence for which provision is made by Act No. XLV of 1860, called the "Indian Penal Code," or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

Exercise of jurisdiction elsewhere than at the ordinary place of sitting of the High Court.

31. And We do further ordain that whenever it shall appear to the Governor in Council convenient that the jurisdiction and power by these Our Letters Patent, or by the recited Act, vested in the said High Court of Judicature at Bombay should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the said High Court other than the usual place of sitting of the said High Court, or at several such places by way of circuit, the proceedings in cases before the said High Court at such place or places shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

Admiralty and Vice-Admiralty Jurisdiction.

33. And We do further ordain that the said High Court of Judicature at Bombay shall have and exercise all such criminal jurisdiction as may now be exercised by the said High Court as a Court of Admiralty, or of Vice-Admiralty, or otherwise in connection with maritime matters, or matters of prize.

Case-law :—(a) Whether a Magistrate's order under S. 8 of Act V of 1876, is a case under clause, Rat. Un. Cr. C. 494; see note under cl. 28, Calcutta Letters Patent. (b) Includes proceeding under S. 145, Cr. P C, 28 C. 709; 26 M. 188; see notes under cl. 29, Calcutta and Madras Letters Patents. (c) High Court can transfer to itself appeal filed in Sessions Court, Rat. Un. Cr. C. 110; see, also, notes under cl. 29, Calcutta and Madras Letters Patents.

Powers of Single Judges and Division Courts.

36. And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Single Judges and Division Courts. Judicature at Bombay in the exercise of its original or appellate^(a) jurisdiction, may be performed by any Judge or any Division Court thereof, appointed or constituted for such purpose, under the provisions of the thirteenth section of the aforesaid Act of the Twenty-fourth and Twenty-fifth Years of Our reign; and if such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided then the opinion of the senior Judge^(b) shall prevail.

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Criminal Procedure.

38. And We do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court of Judicature at Bombay in the exercise of its ordinary original criminal jurisdiction, and also in all other criminal cases over which the said High Court had jurisdiction immediately before the publication of these presents, shall be regulated by the procedure and practice which was in use in the said High Court immediately before such publication, subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure prescribed by an Act passed by the Governor General in Council, and being Act No. XXV of 1861, or by such further or other laws in relation to Criminal Procedure as may have been or may be made by such authority as aforesaid.

Appeals to Privy Council.

39. And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or Their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree, or order^(c) of the said High Court of Judicature at Bombay made on appeal, and from any final judgment, decree, or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal shall not lie to the said High Court under the provision contained in the fifteenth clause of these presents: Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgment, decree, or order shall involve, directly or indirectly, some claim, demand, or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree, or order made either on appeal or otherwise as aforesaid, when

Case-law :—(a) See notes under cl. 27, Allahabad Letters Patent. (b) See notes under cl. 36, Madras Letters Patent, and cl. 27, Allahabad Letters Patent. (c) Order under cl. 10 is not appealable, 32 B. 106; see, also, notes under cl. 39, Calcutta and Madras Letters Patents.

the said High Court shall declare that the case is a fit one for appeal to Us, Our heirs or successors, in Our or Their Privy Council. Subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the said Presidency, except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

40. And We do further ordain that it shall be lawful for the said High Court of Judicature at Bombay, at its discretion, on the motion, or if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition, of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order, or sentence of the said High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or Their Privy Council, subject to the same rules, regulations, and limitations as are herein expressed respecting appeals from final judgments, decrees, orders, and sentences.

41. And We do further ordain that from any judgment, order, or sentence of the said High Court of Judicature at Bombay, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order, or sentence to appeal to Us, Our heirs or successors in Council, provided the said High Court shall declare that the case is a fit^(a) one for such appeal, and under such conditions as the said High Court may establish or require, subject always to such rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

42. And We do further ordain that in all cases of appeal made from any judgment, order, sentence, or decree of the said High Court of Judicature at Bombay to Us, Our heirs or successors, in Our or Their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors, in Our or Their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees, and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court. And that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or Their Privy Council, a copy of the reasons ^(b) given by the Judges of such Court, or by any of such Judges, for or against the judgment or determination appealed against. And We do further ordain that the said High Court

Case-law :—(a) Leave to appeal in what cases may be given, 10 B.H.C. 75; 33 B. 221; can't be given on ground of misdirection to jury, especially in absence of miscarriage of justice, 20 I.A. 90; see notes under cl. 41, Calcutta Letters Patent. (b) Grounds of decision should be recorded and transmitted, 12 M.I.A. 495 (502).

Letters Patent (Calcutta) LETTERS PATENT (CALCUTTA).

shall, in all cases of appeal to Us, Our heirs or successors, conform to and execute, or cause to be executed, such judgments and orders as We, Our heirs or successors, in Our or Their Privy Council, shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal orders, or other order or rule, of the said High Court should or might have been executed.

Calls for Records, etc., by the Government.

43. And it is Our further will and pleasure that the said High Court of Judicature at Bombay shall comply with such requisitions as may be made by the Government for records, returns, and statements, in such form and manner as such Government may deem proper.

High Court to comply with requisition from Government for records, etc.

44. And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor General in Council, exercised at meetings for the purpose of making laws and regulations, and also of the Governor General in cases of emergency, under the provisions of an Act of the Twenty-fourth and Twenty-fifth Years of Our reign, chapter sixty-seven, and may be in all respects amended and altered thereby.

Powers of Indian Legislature preserved.

45. And it is Our further will and pleasure that these Letters Patent shall be published by the Governor in Council, and shall come into operation from and after the date of such publication, and that, from and after the date on which effect shall have been given to them, so much of the aforesaid Letters Patent granted by His Majesty King George the Fourth as was not revoked or determined by the said Letters Patent of the Twenty-sixth of June One thousand eight hundred and sixty-two, and is inconsistent with these Letters Patent, shall cease, determine, and be utterly void, to all intents and purposes whatsoever.

Provisions of former Letters Patent inconsistent with these Letters Patent to be void.

In witness whereof We have caused these Our Letters to be made Patent. Witness Ourselves at Westminster the Twenty-eighth Day of December in the Twenty-ninth Year of our Reign.

By warrant under the Queen's Sign Manual.

(Signed) C. ROMILLY.

LETTERS PATENT (CALCUTTA).

*For the High Court of Judicature at Fort William in Bengal,
dated 28th December, 1865.*

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. To all to whom these presents shall come, greeting:

Recital of Acts 24 & 25 Vict., c. 104.

Whereas by an Act of Parliament passed in the twenty-fourth and twenty-fifth years of Our reign, entitled "An Act for establishing High Courts of Judicature in India," it was, amongst other things,

LETTERS PATENT (CALCUTTA). Letters Patent (Calcutta)

enacted that it shall be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William in Bengal, for the Bengal Division of the Presidency of Fort William, aforesaid, and that such High Court should consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty might, from time to time, think fit to appoint, who shall be selected from among persons qualified as in the said Act is declared: Provided always that, the persons who at the time of the establishment of such High Court were Judges of the Supreme Court of Judicature and permanent Judges of the Court of Sudder Dewany Adawlut or Sudder Adawlut of the same Presidency, should be and become Judges of such High Court without further appointment for that purpose, and the Chief Justice of such Supreme Court should become the Chief Justice of such High Court, and that upon the establishment of such High Court as aforesaid, the Supreme Court and the Court of Sudder Dewany Adawlut and Sudder Nizamut Adawlut at Calcutta, in the said Presidency, should be abolished:

And that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate and matrimonial jurisdiction, original and appellate, and all such powers and authority for, and in relation to, the administration of justice in the said Presidency as Her Majesty might, by such Letters Patent as aforesaid, grant and direct, subject, however, to such directions and limitations as to the exercise of original, civil and criminal jurisdiction beyond the limits of the Presidency town as might be prescribed thereby: and save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor General of India in Council, the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last mentioned Courts:

And whereas We did, upon full consideration of the premises, think fit to erect and establish, and by Our Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, the fourteenth day of May, in the twenty-fifth year of Our reign, in the year of Our Lord one thousand eight hundred and sixty-two, did, accordingly, for Us, Our heirs and successors, erect and establish, at Fort William in Bengal, for the Bengal Division of the Presidency of Fort William aforesaid, a High Court of Judicature, which should be called the High Court of Judicature at Fort William in Bengal, and did thereby constitute the said Court to be a Court of Record; and whereas we did thereby appoint and ordain that the said High Court of Judicature at Fort William in Bengal should, until further or other provision should be made by Us or Our heirs and successors in that behalf, in accordance with the recited Act, consist of a Chief Justice and thirteen Judges, and did thereby, in addition to the persons who, at the time of the establishment of the said High Court, were Judges of the Supreme Court of Judicature and permanent Judges of the Court of Sadr Diwani Adalat in the said Presidency respectively, constitute and appoint certain

other persons, being respectively qualified, as in the said Act is declared, to be Judges of the said High Court :

And whereas, on the thirtieth day of January one thousand eight hundred and sixty-three, We did, in the manner in the said recited Act, provide, direct, and ordain that the said High Court should consist of a Chief Justice and fourteen Judges :

And whereas by the said recited Act it is declared lawful for Her Majesty at any time within three years after the establishment of the said High Court, by Her Letters Patent, to revoke all or such parts or provisions as Her Majesty might think fit of the Letters Patent by which such Court was established, and to grant and make such other powers and provisions as Her Majesty might think fit, and as might have been granted or made by such first Letters Patent :

And whereas by the Act of the twenty-eighth year of Our reign, chapter fifteen, entitled "An Act to extend the term for granting fresh Letters Patent for the High Courts in India, and to make further provision respecting the Territorial Jurisdiction of the said Courts," the time for issuing fresh Letters Patent has been extended to the first of January one thousand eight hundred and sixty-six :

And whereas, in order to make further provision respecting the constitution of the said High Court, and the administration of justice thereby, it is expedient that the said Letters Patent, dated the fourteenth of May one thousand eight hundred and sixty-two, should be revoked, and that some of the powers and provisions thereby granted and made should be granted and made with amendments and additional powers and provisions by fresh Letters Patent.

1. Now know ye that We, upon full consideration of the premises, and of Our special grace, certain knowledge, and mere motion, have thought fit to revoke, and do by these presents (from and after the date of the publication thereof as hereinafter provided, and subject to the provisions thereof) revoke Our said Letters Patent of the fourteenth of May, one thousand eight hundred and sixty-two, except so far as the Letters Patent of the fourteenth year of His Majesty King George the Third, dated the twenty-sixth of March, one thousand seven hundred and seventy-four, establishing a Supreme Court of Judicature at Fort William in Bengal, were revoked or determined thereby.

2. And We do by these presents grant, direct, and ordain that notwithstanding the revocation of the said Letters Patent of the fourteenth of May, one thousand eight hundred and sixty-two, the High Court of Judicature, called the High Court of Judicature at Fort William in Bengal, shall be and continue, as from the time of the original erection and establishment thereof, the High Court of Judicature at Fort William in Bengal, for the Bengal Division of the Presidency of Fort William aforesaid ; and that the said Court shall be and continue a Court of Record, and that all proceedings commenced in the said High Court prior to the date of the publication of these Letters Patent, shall be continued and

Revocation of Letters Patent of 1862.
High Court at Fort William to be continued.

S. 6 LETTERS PATENT (CALCUTTA). Letters Patent (Calcutta)

depend in the said High Court, as if they had commenced in the said High Court after the date of such publication, and that all rules and orders in force in the said High Court immediately before the date of the publication of these Letters Patent, shall continue in force, except so far as the same are altered hereby, until the same are altered by competent authority.

3. And We do hereby appoint and ordain that the person and persons, who shall immediately before the date of the publication of these Letters Patent, be the Chief Justice or Judges, or acting Chief Justice or Judges, if any, of the said High Court of Judicature at Fort William in Bengal, shall continue to be the Chief Justice and Judges, or acting Chief Justice or Judges of the said High Court, until further or other provision shall be made by Us or Our heirs and successors in that behalf, in accordance with the said recited Act for establishing High Courts of Judicature in India.

4. And We do hereby appoint and ordain that every clerk and ministerial officer of the said High Court of Judicature at Fort William in Bengal, appointed by virtue of the said Letters Patent of the fourteenth of May, one thousand eight hundred and sixty-two, shall continue to hold and enjoy his office and employment, with the salary thereunto annexed, until he be removed from such office and employment; and he shall be subject to the like power of removal, regulations, and provisions as if he were appointed by virtue of these Letters Patent.

5. And We do hereby ordain that the Chief Justice and every Judge who shall be from time to time appointed to the said High Court of Judicature at Fort William in Bengal, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Governor General in Council may commission to receive it:—

"I, A. B., appointed Chief Justice [or a Judge] of the High Court of Judicature at Fort William in Bengal, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge, and judgment."

6. And We do hereby grant, ordain, and appoint that the said High Court of Judicature at Fort William in Bengal, shall have and use, as occasion may require, a seal bearing a device and impression of Our Royal Arms, within an exergue or label surrounding the same, with this inscription: "The Seal of the High Court at Fort William in Bengal." And We do further grant, ordain, and appoint that the said Seal shall be delivered to and kept in the custody of the Chief Justice, and in case of vacancy of the office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice, under the provisions of section 7 of the recited Act; and We do further grant, ordain, and appoint that, whensoever it shall happen that the office of Chief Justice or of the Judge to whom the custody of the said

Seal be committed shall be vacant, the said High Court shall be and is hereby authorized and empowered to demand, seize, and take the said Seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her, or their possession.

7. And We do hereby further grant, ordain, and appoint that all Writs, etc., to issue in name of the Crown and under Seal. writs, summons, precepts, rules, orders, and other mandatory process to be used, issued, or awarded by the said High Court of Judicature at Fort William in Bengal, shall run and be in the name and style of Us, or of Our heirs and successors, and shall be sealed with the Seal of the said High Court.

8. And We do hereby authorize and empower the Chief Justice of the said High Court of Judicature at Fort William in Bengal, from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Governor General in Council, to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And We do hereby ordain that every such appointment shall be forthwith submitted to the approval of the Governor General in Council, and shall be either confirmed or disallowed by the Governor General in Council. And it is Our further will and pleasure, and We do hereby, for Us, Our heirs and successors, give, grant, direct, and appoint that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall, from time to time, appoint for each office and place respectively, and as the Governor General in Council, shall approve of: Provided always, and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as they shall hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed by the Governor General in Council, and to absent himself from the said limits during the term of such leave, in accordance with the said rules.

Admission of Advocates, Vakeels, and Attorneys.

9. And We do hereby authorize and empower the said High Court of Judicature at Fort William in Bengal; to approve, admit, and enrol such and so many Advocates, Vakeels, and Attorneys as to the said High Court shall seem meet; and such Advocates, Vakeels (a), and Attorneys shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions.

Case-law :—(a) Vakeels have no right of audience in High Court in trial of cases sent up under Act XIV of 1908, 18 C.W.N. 605.

S. 22 LETTERS PATENT (CALCUTTA). Letters Patent (Calcutta)

10. And We do hereby ordain that the said High Court of Judica-

In making rules for the qualifications, etc., of Advocates, Vakeels and Attorneys.

ture at Fort William in Bengal shall have power to make rules for the qualification ^(a) and admission of proper persons to be Advocates, Vakeels and Attorneys-at-law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause ^(b), the said Advocates, Vakeels or Attor-

neys-at-law; and no person whatsoever but such Advocates, Vakeels or Attorneys shall be allowed to act or to plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear, plead, or act on his own behalf, or on behalf of a co-suitor.

Civil Jurisdiction of the High Court.

* * * *

15. And We do further ordain that an appeal ^(c) shall lie to the

Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction.

said High Court of Judicature at Fort William in Bengal, from the judgment ^(d) not being a sentence or order passed or made in any criminal trial ^(e) of one Judge of the said High Court, or of one Judge of any Division Court, pursuant to section 13 of the said recited Act, and that an appeal shall also lie to the said High Court from the judgment (not being a sen-

tence or order as aforesaid) of two or more Judges of the said High Court, or of such Division Court, whenever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being; but that the right of appeal from other judgments of Judges of the said High Court, or of such Division Court, shall be to Us, Our heirs or successors, in Our or Their Privy Council, as hereinafter provided.

Criminal Jurisdiction.

22. ^(f) And We do further ordain that the said High Court of

Ordinary original jurisdiction of the High Court.

Judicature at Fort William in Bengal, shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction; and also in respect of all such persons both within the limits of the Bengal Division of the Presidency of Fort William, and

Case-law:—(a) A woman though otherwise qualified, not entitled to be enrolled as legal practitioner, 21 C.W.N. 74=24 C.L.J. 382. (b) *E.g.* Champertous agreement with client, 4 C.L.J. 259; attorney criminally liable for false statement in affidavit made in answer to rule issued against him under clause, 41 C. 447; see notes under cl. 8, Allahabad Letters Patent and cl. 10, Madras Letters Patent. (c) Under clause not confined to civil matters but cover criminal cases also, 29 C. 286=6 C.W.N. 254; but see 17 M. 105 *contra*; vide note under cl. 10, Allahabad Letters Patent. (d) Judgment, meaning of, 8 B.L.R. 433; order under Ss. 491 and 495, Cr. P.C. for release from illegal custody is a judgment, 29 C. 286 (F.B.)=6 C.W.N. 254; also order under S. 195, Cr. P.O. extending period of sanction, 32 C. 379; and one refusing application to commit for contempt, 25 C. 286, are judgment; order for issue of writ of *mandamus* is not a judgment, 8 B.L.R. 433; nor is an order granting certificate of fitness of case for appeal to Privy Council, 17 C. 455; nor one refusing the same, 7 C. 899; see notes under cl. 15, Bombay and Madras Letters Patents. (e) See notes under cl. 15, Madras Letters Patent. (f) See notes under cl. 22, Madras Letters Patent.

beyond such limits, and not within the limits of the criminal jurisdiction of any other High Court or Court established by competent legislative authority for India, as the said High Court of Judicature at Fort William in Bengal, shall have criminal jurisdiction over at the date of the publication of these presents.

23. And We do further ordain that the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original criminal jurisdiction shall be empowered to try all persons brought before it in due course of law.

Jurisdiction as to persons.

24. And We do further ordain that the said High Court of Judicature at Fort William in Bengal, shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the said High Court, and shall have authority to try at its discretion any such persons brought before it on charges preferred by the Advocate-General, or by any Magistrate or other officer specially empowered by the Government in that behalf.

Extraordinary original criminal jurisdiction.

25. And We do further ordain that there shall be no appeal to the said High Court of Judicature at Fort William in Bengal, from any sentence or order passed or made in any criminal trial (a) before the Courts of original criminal jurisdiction, which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion (b) of any such Court to reserve (c) any point or points of law for the opinion of the said High Court.

No appeal from High Court exercising original jurisdiction.

Court may reserve points of law.

26. And We do further ordain that on such point or points of law being so reserved as aforesaid, or on its being certified (d) by the said Advocate-General, that in his judgment there is an error (e) in the decision of a point or points of law decided by the Court of original criminal jurisdiction, or that a point or points of law which has or have been decided by the said Court should be further considered, the said High Court shall have full power and authority to review (f) the case or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right.

High Court to review on certificate of the Advocate-General.

Case-law :—(a) See notes under cl. 25, Madras Letters Patent. (b) and (c) See notes under cl. 25, Bombay Letters Patent. (d) Certificate when grantable, 4 O.W.N. 438 (F.B.); see, also, note under cl. 26, Bombay Letters Patent. (e) *B.g.*, sentence of rigorous imprisonment for offence punishable only with simple imprisonment, 1 Ind. Jur. N.S. 424; misdirection to jury and improper reception of evidence, 17 O. 462; refusal to grant adjournment in exercise of discretion is not an error, 4 O.W.N. 438 (F.B.); in absence of error certificate is misconceived and High Court can't interfere, 19 O.W.N. 653 = 21 O.L.J. 377 = 30 Ind. Cas. 113 (F.B.). (f) In case under clause Court can review whole case, 1 O. 407; see 21 O.W.N. 33 (F.B.) = 24 C.L.J. 400; see notes under cl. 26, Bombay and Madras Letters Patents.

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27. And We do further ordain that the said High Court of Judicature at Fort William in Bengal, shall be a Court of Appeal from the Criminal Courts of the Bengal Division of the Presidency of Fort William, and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any law now in force.

28. And We do further ordain that the said High Court of Judicature at Fort William in Bengal, shall be a Court of reference ^(a) and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges or by any other officers now authorised to refer cases to the said High Court, and to revise ^(b) all such cases tried by any Officer or Court possessing criminal jurisdiction, as are now subject to reference to, or revision by, the said High Court.

29. And We do further ordain that the said High Court shall have power to direct the transfer of any criminal case ^(c) or appeal from any Court to any other Court of equal or superior jurisdiction ^(d), and also direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs, in ordinary course, to the jurisdiction of some other Officer or Court.

Criminal Law.

30. And We do further ordain that all persons brought for trial before the said High Court of Judicature at Fort William in Bengal, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of appeal, reference or revision, charged with any offence for which provision is made by Act No. XLV of 1860, called the "Indian Penal Code," or by any Act amending or excluding the said Act, which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

Exercise of Jurisdiction elsewhere than at the ordinary place of sitting of the High Court.

31. And We do further ordain that whenever it shall appear to the Governor General in Council convenient that the jurisdiction and power by these Our Letters Patent, or by the recited Act, vested in the said High Court of Judicature at Fort William in Bengal, should be exercised in any place within the jurisdiction of any

Case-law :—(a) Jurisdiction of High Court in hearing case submitted under S. 307, Cr. P.O., is that of a Court of reference, 29 C. 286 ; jurisdiction of Court of reference co-extensive with appellate jurisdiction, *ibid.* (b) Whether order of discharge by Presidency Magistrate, open to revision under clause, 26 C. 746 ; 27 C. 126 ; see notes under cl. 28, Bombay Letters Patent. (c) Includes proceeding under S. 145, Cr. P.C., 28 C. 709 ; see notes under cl. 29, Madras Letters Patent. (d) Case can be transferred to High Court itself, 15 W.R. (Cr.) 69=7 B.L.R. 240 ; see, also, notes under cl. 29, Bombay and Madras Letters Patents ; mere possibility of difficult questions arising, no ground for transfer, 15 W.R. (Cr.) 69.

Court now subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court, or at several such places by way of circuit, the proceedings in cases before the said High Court at such place or places shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

Admiralty and Vice-Admiralty Jurisdiction.

* * *

33. And We do further ordain that the said High Court of Judicature at Fort William in Bengal, shall have and exercise Criminal. criminal jurisdiction as may now be exercised by the said High Court as a Court of Admiralty or of Vice-Admiralty, or otherwise in connection with maritime matters or matters of prize.

* * *

Powers of single Judges and Division Courts.

36. And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Single Judges and Division Courts. Judicature at Fort William in Bengal, in the exercise of its original or appellate ^(a) jurisdiction, may be performed by any Judge or by any Division Court thereof, appointed or constituted for such purpose under the provisions of the thirteenth section of the aforesaid Act of the twenty-fourth and twenty-fifth years of Our reign ; and if such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority ; but if the Judges should be equally divided then the opinion of the senior Judge ^(b) shall prevail.

* * *

Criminal Procedure.

38. And We do further ordain that the proceedings in all criminal Regulation of pro- cases which shall be brought before the said High Court of Judicature at Fort William in Bengal, in the Criminal Procedure. proceedings. exercise of its ordinary original criminal jurisdiction and also in all other criminal cases over which the said High Court had jurisdiction immediately before the publication of these presents, shall be regulated by the procedure and practice which was in use in the said High Court immediately before such publication subject to any law which has been or may be made in relation thereto by competent legislative authority for India : and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure, prescribed by an Act passed by the Governor General in Council, and being Act No. XXV of 1861, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

Case-law :—(a) See notes under cl. 27, Allahabad Letters Patent. (b) See notes under cl. 36, Madras Letters Patent, and cl. 27, Allahabad Letters Patent.

Appeals to Privy Council.

39. And We do further ordain that any person or persons may appeal ^(a) to Us, Our heirs and successors, in Our or Their Privy Council, in any matter not being of criminal jurisdiction from any final judgment, decree, or order of the said High Court of Judicature at Fort William in Bengal made on appeal and from any final judgment, decree, or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal shall not lie to the said High Court, under the provisions contained in the 15th clause of these presents : Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgment, decree, or order shall involve, directly or indirectly, some claim, demand, or question to or respecting property amounting to or of the value of not less than 10,000 rupees ; or from any other final judgment, decree, or order made either on appeal or otherwise aforesaid, when the said High Court shall declare that the case is a fit one for appeal to Us, Our heirs or successors, in Our or Their Privy Council. Subject always to such rules and orders as are now in force, or may, from time to time, be made, respecting appeals to Ourselves in Council from the Courts of the said Presidency ; except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

40. And We do further ordain that it shall be lawful for the said High Court of Judicature at Fort William in Bengal, at its discretion on the motion or if the said High Court be not sitting, then for any Judge of the said High Court upon the petition, of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order or sentence of the High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or Their Privy Council, subject to the same rules, regulations and limitations, as are herein expressed respecting appeal from final judgments, decrees, orders and sentences.

41. And We do further ordain that, from any judgment, order or sentence of the said High Court of Judicature at Fort William in Bengal, made in the exercise of original ^(b) criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order, or sentence to appeal to Us, Our heirs or successors in Council, provided the said High Court shall declare ^(c)

Case-law :—(a) Order under cl. 10, is not appealable to Privy Council, 41 C 734 ; see notes under cl. 39, Bombay and Madras Letters Patents. (b) Order passed on appellate side not appealable to Privy Council, 18 C.L.J. 119 ; *ibid*, 121. (c) Leave can't be granted to appeal from decision of third Judge in a case referred to him owing to difference of opinion of two Judges, 18 C.L.J. 121 ; see notes under cl. 41, Bombay Letters Patent.

that the case is a fit one for such appeal and under such conditions as the said High Court may establish or require, subject always to such rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

42. And We do further ordain that, in all cases of appeal made from any judgment, order, sentence or decree of the said High Court of Judicature at Fort William in Bengal to Us, Our heirs or successors, in Our or Their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors in Our or Their Privy Council a true and correct copy of all evidence, proceedings, judgments, decrees, and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court, and that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or Their Privy Council, a copy of the reasons ^(a) given by the Judges of such Court, or by any such Judges, for or against the judgment or determination appealed against.

And We do further ordain that the said High Court shall, in all cases of appeal to Us, Our heirs or successors, conform to and execute or cause to be executed, such judgments and orders as We, Our heirs or successors in Our or Their Privy Council, shall think fit to make in the premises in such manner as any original judgment, decree or decretal orders, or other order or rule of the said High Court should or might have been executed.

Calls for Records, etc., by the Government.

43. And it is Our further will and pleasure that the High Court of Judicature at Fort William in Bengal shall comply with such requisitions as may be made by the Government for records, returns, and statements in such form and manner as such Government may deem proper.

44. And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the Legislative powers of the Governor General in Council, exercised at meetings for the purpose of making Laws and Regulations, and also of the Governor General in cases of emergency under the provisions of an Act of the twenty-fourth and twenty-fifth years of Our reign, chapter sixty-seven, and may be in all respects amended and altered thereby.

45. And it is Our further will and pleasure that these Letters Patent, shall be published by the Governor General in Council, and shall come into operation from and after the date of such publication; and that from and after the date on which effect shall have been given to them, so much of the aforesaid Letters Patent granted by His Majesty, King George the Third, as was not revoked or determined by the said Letters Patent of the fourteenth of May, one

Case-law :— (a) See note under cl. 42, Bombay Letters Patent.

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thousand eight hundred and sixty-two, and is inconsistent with these Letters Patent, shall cease, determine and be utterly void, to all intents and purposes whatsoever.

In Witness thereof We have caused these Our Letters to be made Patent. Witness Ourselves at Westminster, the twenty-eighth day of December, in the twenty-ninth year of Our reign.

By Warrant under the Queen's Sign Manual.

(Signed) C. ROMILLY.

LETTERS PATENT (MADRAS).

THE AMENDED LETTERS PATENT.

For the High Court of Judicature for the Presidency of Madras.

Bearing date the Twenty-eighth day of December, in the Twenty-ninth year of the Reign of VICTORIA in the year of Our Lord, one Thousand Eight Hundred and Sixty-five.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

Recitals of Act 24
& 25 Vict., c. 104,
Ss. 1, 2, 3 and 8.

To all to whom these Presents shall come, Greeting :
Whereas by an Act of Parliament passed in the Twenty-fourth and Twenty-fifth years of Our Reign, entitled " An Act for establishing High Courts of Judicature in India." It was, amongst other things, enacted that it should be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Madras, for the Presidency of Madras aforesaid, and that such High Court should consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty might, from time to time, think fit to appoint, who should be selected from among persons qualified as in the said Act is declared : Provided always that the persons who at the time of the establishment of such High Court were Judges of the Supreme Court of Judicature, and permanent Judges of the Court of Sudder Dewanny Adawlut or Sudder Adawlut of the same Presidency, should be and become Judges of such High Court, without further appointment for that purpose, and the Chief Justice of such Supreme Court should become the Chief Justice of such High Court, and that upon the establishment of such High Court as aforesaid, the Supreme Court and the Court of Sudder Dewanny Adawlut and Faujdarry Adawlut at Madras, in the said Presidency, should be abolished :

And that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty, and vice-admiralty, testamentary, intestate and matrimonial jurisdiction, original and appellate, and all such powers and authority for, and in relation to, the administration of justice in the said Presidency as Her Majesty might, by such Letters Patent as aforesaid, grant and direct, subject, however, to such directions and limitations as to the exercise of original, Civil and Criminal jurisdiction

Letters Patent (Madras) LETTERS PATENT (MADRAS).

beyond the limits of the Presidency Town, as might be prescribed thereby ; and, save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor General of India in Council, the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever, in any manner vested in any of the Courts (a) in the same Presidency abolished under the said Act at the time of the abolition of such last mentioned Courts :

And whereas We did, upon full consideration of the premises, think fit to erect and establish, and by Our Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland bearing date at Westminster, the Twenty-sixth day of June, in the Twenty-fifth Year of Our Reign, in the Year of Our Lord, One thousand eight hundred and sixty-two, did accordingly, for Us, Our heirs and successors, erect and establish at Madras, for the Presidency of Madras aforesaid, a High Court of Judicature, which should be called the High Court of Judicature at Madras, and did thereby constitute the said Court to be a Court of Record ; and whereas We did thereby appoint and ordain, that the said High Court of Judicature at Madras should, until further or other provision should be made by Us, or Our heirs and successors in that behalf, in accordance with the recited Act, consist of a Chief Justice and five Judges, and did thereby constitute and appoint certain persons, being respectively qualified as in the said Act is declared, to be Judges of the said High Court :

And whereas by the said recited Act it is declared lawful for Her Majesty, at any time within Three Years after the establishment of the said High Court, by Her Letters Patent, to revoke all or such parts or provisions as Her Majesty might think fit of the Letters Patent by which such Court was established, and to grant and make such other powers and provisions as Her Majesty might think fit, and as might have been granted or made by such first Letters Patent :

And whereas by the Act of the Twenty-eighth year of Our Reign, chapter fifteen, entitled " An Act to extend the Term for granting fresh Letters Patent for the High Courts in India, and to make further provision respecting the territorial jurisdiction of the said Courts," the time for issuing fresh Letters Patent has been extended to the first of January, One thousand eight hundred and sixty-six :

And whereas, in order to make further provision respecting the constitution of the said High Court, and the administration of Justice thereby, it is expedient that the said Letters Patent, dated the Twenty-sixth of June, One thousand eight hundred and sixty-two, should be revoked, and that some of the powers and provisions thereby granted and made should be granted and made with amendments and additional powers and provisions by fresh Letters Patent :

Charter granted
26th June, 1862.

24 and 25 Vict.,
c. 104, S. 17.

28 Vict., c. 15,
S. 1.

And the expedi-
ency of fresh Letters
Patent.

1. Now know ye that We, upon full consideration of the premises and of Our special grace, certain knowledge and mere motion have thought fit to revoke, and do by these presents (from and after the date of the publication thereof, as hereinafter provided, and subject to the provisions thereof) revoke Our said Letters Patent of the Twenty-sixth of June, One thousand eight hundred and sixty-two, except so far as the Letters Patent of the Forty-first Year of His Majesty King George the Third, dated the Twenty-sixth of December, One thousand eight hundred, establishing a Supreme Court of Judicature at Madras, were revoked or determined thereby.

2. And We do by these presents grant, direct and ordain that, notwithstanding the revocation of the said Letters Patent of the Twenty-sixth of June, One thousand eight hundred and sixty-two, the High Court of Judicature called the High Court of Judicature at Madras, shall be and continue, as from the time of the original erection and establishment thereof, the High Court of Judicature at Madras for the Presidency of Madras aforesaid; and that the said Court shall be and continue a Court of Record, and that all proceedings commenced in the said High Court prior to the date of the publication of these Letters Patent shall be continued and depend in the said High Court as if they had commenced in the said High Court after the date of such publication, and that all rules and orders in force in the said High Court immediately before the date of the publication of these Letters Patent shall continue in force except so far as the same are altered hereby, until the same are altered by competent authority.

3. And We do hereby appoint and ordain that the person and persons who shall immediately before the date of the publication of these Letters Patent be the Chief Justice and Judges, or Acting Chief Justice or Judges, if any, of the said High Court of Judicature at Madras, shall continue to be the Chief Justice and Judges, or Acting Chief Justice or Judges, of the said High Court, until further or other provision shall be made by Us or Our heirs and successors in that behalf, in accordance with the said recited Act for establishing High Courts of Judicature in India.

4. And We do hereby appoint and ordain that every clerk and ministerial officer of the said High Court of Judicature at Madras, appointed by virtue of the said Letters Patent of the Twenty-sixth June, One thousand eight hundred and sixty-two, shall continue to hold and enjoy his office and employment, with the salary thereunto annexed until he be removed from such office and employment; and he shall be subject to the like power of removal, regulations, and provisions as if he were appointed by virtue of these Letters Patent.

5. And We do hereby ordain that the Chief Justice and every Judge who shall be from time to time appointed to the said High Court of Judicature at Madras, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such

authority or person as the Governor in Council may commission to receive it:—

"I, A.B., appointed Chief Justice [or a Judge] of the High Court of Judicature at Madras, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment."

6. And We do hereby grant, ordain, and appoint that the said High Court of Judicature at Madras shall have and use, as occasion may require, a seal bearing a device and impression of our Royal Arms, with an exergue or label surrounding, the same, with this inscription, "The Seal of the High Court at Madras." And We do further grant, ordain, and appoint that the said seal shall be delivered to and kept in the custody of the Chief Justice, and in case of the vacancy of the office of Chief Justice or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice, under the provisions of section 7 of the said recited Act; and We do further grant, ordain and appoint that, whensoever it shall happen that the office of Chief Justice or of the Judge to whom the custody of the said seal be committed shall be vacant, the said High Court shall be and is hereby authorized and empowered to demand, seize, and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her, or their possession.

7. And We do hereby further grant, ordain, and appoint that all writs, summons, precepts, rules, orders and other mandatory process to be used, issued or awarded by the said High Court of Judicature at Madras, shall run and be in the name and style of Us, or of Our heirs and successors, and shall be sealed with the seal of the said High Court.

8. And We do hereby authorize and empower the Chief Justice of the said High Court of Judicature at Madras from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Governor in Council, to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of Justice, and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And We do hereby ordain that every such appointment shall be forthwith submitted to the approval of the Governor in Council, and shall be either confirmed or disallowed by the Governor in Council. And it is Our further will and pleasure, and We do hereby, for Us, Our heirs and successors, give, grant, direct, and appoint that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall, from time to time, appoint for each office and place respectively and as the Governor in Council, subject to the control of the Governor General in Council, shall approve of: Provided always, and it is Our will and pleasure that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as they shall hold their respective offices; but this proviso shall not interfere with or prejudice the right of any other officer or clerk to avail himself of leave

of absence under any rules prescribed by the Governor in Council, and to absent himself from the said limits during the term of such leave, in accordance with the said rules.

Admission of Advocates, Vakeels and Attorneys.

9. And We do hereby authorize and empower the said High Court of Judicature at Madras to approve, admit, and enrol such and so many Advocates, Vakeels, and Attorneys, as to the said High Court, shall seem meet; and such Advocates, Vakeels, and Attorneys shall be and are hereby authorized to appear for the suitors of the said

High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions.

10. And We do hereby ordain that the said High Court of Judicature at Madras shall have power to make rules for the qualification (a) and admission of proper persons to be Advocates, Vakeels and Attorneys-at-law of the said High Court (b) and shall be empowered to remove or to suspend from practice on reasonable cause (c), the said Advocates, Vakeels, or Attorneys at-law, and no person whatsoever but such Advocates, Vakeels, or Attorneys shall be allowed to act or plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed, to appear, plead, or act on his own behalf, or on behalf of a co-suitor.

Civil Jurisdiction of the High Court.

Appeal from the Courts of original jurisdiction to the High Court in its Appellate jurisdiction.

16. And We do further ordain that an appeal (d) shall lie to the said High Court of Judicature at Madras from the judgment (e) (not being a sentence or order passed or made in any criminal trial (f), of one Judge of the said High Court, or of one Judge of

Case-law :—(a) A woman though otherwise qualified, not entitled to be enrolled as legal practitioner, 21 C.W.N. 74=24 C.L.J. 382. (b) Division Bench can cause notice to be issued against Advocate, 10 M. 28 (F.B.). (c) *E.g.*, sending notice knowing contents to be false, 6 M.L.T. 329; making false statement in letter written by clerk on Vakeel's behalf, 22 M.L.J. 276=(1912) M.W.N. 848; dishonest conduct as Director of Provident Fund, 20 M.L.J. 500=8 M.L.T. 22; but not mere self-glorification in letter to client, 26 M.L.J. 429 (F.B.); see notes under cl. 8, Allahabad Letters Patent and cl. 10, Calcutta Letters Patent. (d) Section inapplicable to cases of criminal jurisdiction, 17 M. 105; but see 29 O. 286, *contra*; *vide* note under cl. 10, Allahabad Letters Patent. (e) Order in proceeding under S. 145, Cr. P.C., is a judgment, 17 M.L.J. 158; so also is order under S. 195, Cr.P.C., a judgment, 12 M.L.J. 408; but see 39 A. 147, *contra*; order refusing bail to an accused is not a judgment, 19 M.L.J. 478; nor is order granting certificate to appeal to Privy Council, 17 C. 455; nor one refusing the same, 7 O. 839; nor an order in proceeding under S. 107, Cr. P.C., 27 M. 510; see, also, notes under cl. 15, Calcutta and Bombay Letters Patents. (f) Criminal trial includes criminal appeal and criminal revision arising out of criminal trial, 2 L.W. 363, see, also, 27 M. 510; 4 M.L.T. 502; proceeding for security under S. 107, Cr. P.C. is a criminal trial, 27 M. 510; and order passed in appeal or revision in such proceeding is not appealable, *ibid*; likewise no appeal lies from order under Ch. X, Cr., P.C., (1915) M.W.N. 240; from order binding over persons under Ch. VIII, Cr. P.C., 28 M.L.J. 307; for maintenance under S. 498, Cr. P.C., 28 M.L.J. 483=16 Cr. L.J. 326=39 M. 472=28 Ind. Cas. 662=17 M.L.T. 330; for compensation under S. 545, Cr. P.C., 1 Weir 788-B; order of dismissal under S. 421, Cr. P.C. 1 Weir 788-A; and order refusing bail to accused, 19 M.L.J. 478.

any Division Court, pursuant to section 13 of the said recited Act; and that an appeal shall also lie to the said High Court from the judgment, not being a sentence or order as aforesaid, of two or more Judges of the said High Court, or of such Division Court, whenever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being; but that the right of appeal from other judgments of Judges of the said High Court, or of such Division Court, shall be to Us, Our heirs or successors, in Our or Their Privy Council, as hereinafter provided.

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Criminal Jurisdiction.

22. (a) And We do further ordain that the said High Court of Judicature at Madras, shall have ordinary original Criminal jurisdiction^(b), within the local limits of its ordinary original Civil jurisdiction, and also in respect of all such persons, beyond such limits, over whom the said High Court of Judicature at Madras shall have Criminal jurisdiction at the date of the publication of these presents.

23. And We do further ordain that the said High Court of Judicature at Madras, in the exercise of its ordinary original Criminal jurisdiction shall be empowered to try all persons brought before it in due course of law.

24. And We do further ordain that the said High Court of Judicature at Madras shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the said High Court, and shall have authority to try at its discretion any such persons brought before it on charges preferred by the Advocate-General, or by any Magistrate or other officer specially empowered by the Government in that behalf.

25. And We do further ordain that there shall be no appeal to the said High Court of Judicature at Madras from any sentence or order passed or made in any criminal trial^(c) before the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion^(d) of any such Court to reserve^(e) any point or points of law for the opinion of the said High Court.

Case-law :—(a) This and following clauses give no right of appeal against order of single Judge passed in revision, 28 M.L.J. 307. (b) Whether High Court has jurisdiction to issue writ of *certiorari* on officer beyond limits of its original jurisdiction, 28 M.L.J. 893=16 Ind Cas. 755. (c) Includes trial before Special Bench of High Court constituted under Act XIV of 1905, 35 M. 397=12 M.L.T. 1. (d) and (e) See notes under cl. 25, Bombay Letters Patent.

26. And We do further ordain that, on such point or points of law being so reserved as aforesaid, or on its being certified ^(a) by the said Advocate-General that, in his judgment, there is an error ^(b) in the decision of a point or points of law decided by the Court of original Criminal jurisdiction, or that a point or points of law which has or have been decided by the said Court should be further considered, the said High Court shall have full power and authority to review ^(c) the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right.

27. And We do further ordain that the said High Court of Judicature at Madras shall be a Court of appeal from the Criminal Courts of the Presidency of Madras, and from all other Courts, subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any law now in force.

28. And We do further ordain that the said High Court of Judicature at Madras shall be a Court of reference ^(d) and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Session Judges, or by any other Officers now authorized to refer cases to the said High Court, and to revise ^(e) all such cases tried by any officer or Court possessing Criminal jurisdiction, as are now subject to reference or to revision by the said High Court.

29. And We do further ordain that the said High Court shall have power to direct the transfer of any criminal case ^(f) or appeal from any Court to any other Court of equal or superior jurisdiction ^(g), and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs, in ordinary course, to the jurisdiction of some other officer or Court.

Case-law :—(a) and (b) See notes under cl. 26, Bombay and Calcutta Letters Patents. (c) Grant of certificate does not open up whole case as if in appeal, 35 M. 397 = 12 M.L.T. 1; judgment of Special Bench of High Court formed under Act XIV of 1908 can be reviewed, *ibid.*; see notes under cl. 26, Bombay and Calcutta Letters Patents. (d) and (e) See notes under cl. 28, Bombay and Calcutta Letters Patents. (f) Includes proceeding under S. 145, Cr. P. C., 26 M. 198 = 12 M.L.J. 391; 28 C. 709; power to transfer includes power to stay proceedings, 4 M.L.T. 186. (g) Case or appeal can be transferred to High Court itself, 6 M. 32; case can be transferred from Agent to Governor in Agency Tracts to Sessions Court of Vizagapatam, 14 M. 121; *Quere*, whether case can be transferred from one Presidency Magistrate to another Presidency Magistrate, both being Judges of same Court, 18 M.L.J. 69; see notes under cl. 29, Bombay and Calcutta Letters Patents.

Criminal Law.

30. And We do further ordain that all persons brought for trial before the said High Court of Judicature at Madras either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of appeal, reference, or revision, charged with any offence for which provision is made by Act No. XLV of 1860, called the "Indian Penal Code," or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

Exercise of jurisdiction elsewhere than at the ordinary place of sitting of the High Court.

31. And We do further ordain that whenever it shall appear to the Governor in Council convenient that the jurisdiction and power by these Our Letters Patent or by the recited Act, vested in the said High Court of Judicature at Madras should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the said High Court other than the usual place of sitting of the said High Court, or at several such places by way of circuit, the proceedings in cases before the said High Court at such place or places shall be regulated by any law relating thereto, which has been or may be made by competent legislative authority for India.

Admiralty and Vice-Admiralty Jurisdiction.

33. And We do further ordain that the said High Court of Judicature at Madras shall have and exercise all such Criminal jurisdiction as may now be exercised by the said High Court as a Court of Admiralty, or of Vice-Admiralty or otherwise in connection with maritime matters, or matters of prize.

Powers of Single Judges and Division Courts.

36. And We do hereby declare, that any function which is hereby directed to be performed by the said High Court of Judicature at Madras, in the exercise of its original or appellate (*) jurisdiction, may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose, under the provisions of the thirteenth section of the aforesaid Act of the Twenty-fourth and Twenty-fifth years of Our Reign; and if such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges if there shall be a majority, but if the Judges should be equally divided, then the opinion of the senior Judge (b) shall prevail.

Case-law :—(a) See note under cl. 27, Allahabad Letters Patent. (b) Rule applies to order under S. 195, (6), Cr. P. C., 22 M.L.J. 419=11 M.L.T. 367; see note under cl. 27, Allahabad Letters Patent.

Criminal Procedure.

38. And We do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court of Judicature at Madras, in the exercise of its ordinary original criminal jurisdiction, and also in all other criminal cases over which the said High Court had jurisdiction immediately before the publication of these presents, shall be regulated by the procedure and practice which was in use in the said High Court immediately before such publication, subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure prescribed by an Act passed by the Governor General in Council, and being Act No. XXV of 1861, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

Appeals to Privy Council.

39. And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or Their Privy Council, in any matter not being of criminal jurisdiction^(a), from any final judgment, decree, or order of the said High Court of Judicature at Madras made on appeal, and from any final judgment, decree, or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court from which an appeal shall not lie to the said High Court under the provision contained in the 15th clause of these presents: Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgment, decree, or order shall involve, directly or indirectly, some claim, demand or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal to Us, Our heirs or successors, in Our or Their Privy Council; subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the said Presidency; except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

40. And We do further ordain that it shall be lawful for the said High Court of Judicature at Madras, at its discretion, on the motion, or if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order, or sentence of the said High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction,

Case-law:—(a) Refusal to quash by writ of *certiorari* income-tax officer's proceeding directing prosecution is an order passed in criminal jurisdiction, 25 M.L.J. 565; order under cl. 10, is not appealable, 29 M.L.J. 16 = 29 Ind. Cas. 879 (F.B.); see, also, 41 C. 734; 32 B. 106.

to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or Their Privy Council, subject to the same rules, regulations, and limitations as are herein expressed, respecting appeals from final judgments, decrees, orders and sentences.

41.(a) And We do further ordain that from any judgment, order, or sentence of the said High Court of Judicature at Madras, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order, or sentence to appeal to Us, Our heirs or successors, in Council, provided the said High Court shall declare that the case is a fit one for such appeal, and under such conditions as the said High Court may establish or require, subject always to such rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

42. And We do further ordain that, in all cases of appeal made from any judgment, order, sentence, or decree of the said High Court of Judicature at Madras to Us, Our heirs or successors, in Our or Their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors, in Our or Their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees, and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court. And that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or Their Privy Council, a copy of the reasons ^(b) given by the Judges of such Court, or by any of such Judges, for or against the judgment or determination appealed against. And We do further ordain that the said High Court shall, in all cases of appeal to Us, Our heirs or successors, conform to and execute, or cause to be executed, such judgments and orders as We, Our heirs or successors, in Our or Their Privy Council, shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal orders, or other order or rule of the said High Court, should or might have been executed.

Calls for Records, etc., by the Government.

43. And it is Our further will and pleasure that the said High Court of Judicature at Madras shall comply with such requisitions as may be made by the Government for records, returns, and statements, in such form and manner as such Government may deem proper.

44. And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor General in Council, exercised at meetings for the purpose of making laws and regulations, and also of the Governor General in cases of

Case-law :—(a) See notes under cl. 41, Bombay and Calcutta Letters Patents.
(b) See note under cl. 42, Bombay Letters Patent.

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emergency under the provisions of an Act of the Twenty-fourth and Twenty-fifth Years of Our Reign, chapter sixty-seven, and may be in all respects amended and altered thereby.

45. And it is Our further will and pleasure that these Letters Patent should be published by the Governor in Council, and shall come into operation from and after the date of such publication ; and that from and after the date on which effect shall have been given to them, so much of the aforesaid Letters Patent granted by His Majesty King George the Third as was not revoked or determined by the said Letters Patent of the Twenty-sixth of June One thousand eight hundred and sixty-two, and is inconsistent with these Letters Patent, shall cease, determine, and be utterly void, to all intents and purposes whatsoever.

In witness whereof, We have caused these Our Letters to be made Patent. Witness Ourselves, at Westminster, the Twenty-eighth day of December in the Twenty-ninth year of Our Reign.

By warrant under the Queen's Sign Manual.

(Signed). C. ROMILLY.

LETTERS PATENT CONSTITUTING THE
HIGH COURT OF JUDICATURE AT PATNA.

Dated the 9th February, 1916.

Recital of Act 24
and 25 Vict., c. 104.

GEORGE the Fifth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, To all whom these Presents shall come, greeting : Whereas by an Act of Parliament passed in the Twenty-fourth and Twenty fifth Years of the Reign of Her late Majesty Queen Victoria, and called the Indian High Courts Act, 1861, it was, amongst other things, enacted, by section one, that it should be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William in Bengal, for the Bengal Division of the Presidency of Fort William ;

and, by section two, that such High Court should consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty might, from time to time, think fit to appoint, who should be selected from among persons qualified as in the said Act was declared ;

and, by section eight, that upon the establishment of such High Court as aforesaid the Supreme Court and the Court of Sadar Diwani Adalat and Sadar Nizamat Adalat at Calcutta, in the said Presidency, should be abolished ;

and, by section nine, that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty

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and vice-admiralty, testamentary, intestate and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of Justice in the said Presidency, as Her Majesty might by such Letters Patent as aforesaid grant and direct, subject, however, to such directions and limitations, as to the exercise of original civil and criminal jurisdiction beyond the limits of the Presidency town, as might be prescribed thereby; and that, save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor General of India in Council, the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever, in any manner vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last mentioned Courts:

And whereas it was further declared by section sixteen of the said recited Act that it should be lawful for Us by Letters Patent to erect and establish a High Court of Judicature in and for any portion of territories within Our Dominions in India, not included within the limits of the local jurisdiction of another High Court, to consist of a Chief Justice and such number of other Judges, with such qualifications as were by the same Act required in persons to be appointed to the High Courts established at the Presidencies of Fort William in Bengal, of Madras, and of Bombay, as We from time to time might think fit and appoint; and that it should be lawful for Us, by such Letters Patent, to confer on any new High Court which might be so established any such jurisdiction, powers and authority, as under the same Act was authorized to be conferred on or would become vested in the High Court established in any of the said Presidencies; and that, subject to the directions of the Letters Patent, all the provisions of the said recited Act relative to High Courts and to the Chief Justice and other Judges of such Courts, and to the Governor General or Governor of the Presidency in which such High Courts were established, should, as far as circumstances might permit, be applicable to any new High Court which might be established in the said territories, and to the Chief Justice and other Judges thereof, and to the Persons administering the Government of the said territories:

And whereas, upon full consideration of the premises, Her late Majesty Queen Victoria by Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the Fourteenth day of May, in the Twenty-fifth Year of Her Reign, in the Year of Our Lord One thousand eight hundred and sixty-two, did erect and establish a High Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William aforesaid, and did constitute that Court to be a Court of Record:

And whereas Her late Majesty Queen Victoria, by Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the Twenty-eighth day of December, in the Twenty-ninth Year of Her Reign, in the Year of Our Lord One thousand eight hundred and sixty-five, did revoke the said

Letters Patent bearing date the Fourteenth day of May in the Year of Our Lord One thousand eight hundred and sixty-two, but notwithstanding that revocation, did continue the said High Court of Judicature at Fort William in Bengal and declared that the Court should continue to be a Court of Record :

And whereas, upon full consideration of the premises, Her late Majesty Queen Victoria, by Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the Seventeenth day of March in the Twenty-ninth year of Her Reign, in the Year of Our Lord One thousand eight hundred and sixty-six, did erect and establish a High Court of Judicature for the North-Western Provinces, which said Court is situated at Allahabad in the Province of Agra and is now called the High Court of Judicature at Allahabad, and did constitute that Court to be a Court of Record :

And whereas by an Act of Parliament passed in the First and Second Years of Our Reign, and called the Indian High Courts Act, 1911, it was enacted, amongst other things, by section one, that the maximum number of Judges of a High Court of Judicature in India, including the Chief Justice, should be twenty ;

and, by section two, that Our power under section sixteen of the Indian High Courts Act, 1861, might be exercised from time to time, and that a High Court might be established under the said section sixteen in any portion of the territories within Our Dominions in India, whether or not included within the limits of the local jurisdiction of another High Court; and that, where such a High Court was established in any part of such territories included within the limits of the local jurisdiction of another High Court, it should be lawful for Us by Letters Patent to alter the local jurisdiction of that other High Court, and to make such incidental, consequential and supplemental provisions as might appear to be necessary by reason of the alteration of those limits :

And whereas the said Indian High Courts Acts, 1861 and 1911, have been repealed and re-enacted by an Act of Parliament passed in the Fifth and Sixth Years of Our Reign, and called the Government of India Act, 1915 :

And whereas certain territories formerly subject to and included within the limits of the Presidency of Fort William in Bengal were, by Proclamation made by the Governor General of India on the Twenty-second day of March in the Year of Our Lord One thousand nine hundred and twelve, constituted a separate Province, called the Province of Bihar and Orissa, and are now governed by a Lieutenant-Governor in Council :

1. Now know ye that We, upon full consideration of the premises, and of Our special grace, certain knowledge, and mere motion, have thought fit to erect and establish, and by these presents We do accordingly for Us, Our heirs and successors, erect and establish, for the Province of Bihar and Orissa aforesaid, with effect from the date of the publication of these presents in the Bihar and Orissa Gazette, a High Court of Judicature,

Recital of Act 1
& 2 Geo. 5, c. 18.

Recital of Act 5 &
6 Geo. 5, c. 61.

Recital of creation
of Province of Bihar
and Orissa.

Establishment of
High Court at
Patna.

which shall be called the High Court of Judicature at Patna, and We do hereby constitute the said Court to be a Court of Record.

2. And We do hereby appoint and ordain that the High Court of Judicature at Patna shall, until further or other provision be made by Us, or Our heirs and successors, in that behalf in accordance with section One hundred and one of the said recited Government of India Act, 1915, consist of a Chief Justice and six other Judges^(a), the first Chief Justice being Sir Edward Maynard Des Champs Chamier, Knight, and the six other Judges being Saiyid Shurf-ud-din, Esquire, Edmund Pelly Chapman, Esquire, Basanta Kumar Mullick, Esquire, Francois Reginald Roe, Esquire, the Hon'ble Cecil Atkinson, and Jowala Persad, Esquire, being respectively qualified as in the said Act is declared.

3. And We do hereby ordain that the Chief Justice and every other Judge of the High Court of Judicature at Patna, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Lieutenant-Governor in Council may commission to receive it:—

"I, A. B., appointed Chief Justice (or a Judge) of the High Court of Judicature at Patna, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment."

4. And We do hereby grant, ordain and appoint that the High Court of Judicature at Patna shall have and use, as occasion may require, a seal bearing a device and impression of Our Royal arms, within an exergue or label surrounding the same, with this inscription, "The Seal of the High Court at Patna." And We do further grant, ordain and appoint that the said seal shall be delivered to and kept in the custody of the Chief Justice, and in case of vacancy of the office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice under the provisions of section One hundred and five of the Government of India Act, 1915; and We do further grant, ordain and appoint that, whensoever the office of Chief Justice or of the Judge to whom the custody of the said seal be committed is vacant, the said High Court shall be, and is hereby, authorised and empowered to demand, seize and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her or their possession.

5. And We do hereby further grant, ordain and appoint that all writs, summonses, precepts, rules, orders and other mandatory process to be used, issued or awarded by the High Court of Judicature at Patna shall run and be in the name and style of Us, or of Our heirs and successors, and shall be sealed with the seal of the said High Court.

Writes, etc., to issue in name of the Crown, and under seal.



6. And We do hereby authorize and empower the Chief Justice of the High Court of Judicature at Patna from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed from time to time by the Lieutenant-Governor in Council, to appoint so many and such clerks and other ministerial officers as may be found necessary for the administration of justice and the due execution of all the powers and authorities granted and committed to the said High Court by the Our Letters Patent. And We do hereby ordain that every such appointment shall be forthwith submitted to the approval of the Lieutenant-Governor in Council and shall be either confirmed or disallowed by the Lieutenant-Governor in Council. And it is Our further will and pleasure, and We do hereby, for Us, Our heirs and successors, give, grant, direct and appoint, that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice, may, from time to time, appoint for each office and place respectively, and as the Lieutenant-Governor in Council, subject to the control of the Governor General in Council, may approve of : Provided always, and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as they hold their respective offices ; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed from time to time by the Governor General in Council, and to absent himself from the said limits during the term of such leave in accordance with the said rules.

Admission of Advocates, Vakils and Attorneys.

7. And We do hereby authorize and empower the High Court of Judicature at Patna to approve, admit and enrol such and so many Advocates, Vakils and Attorneys as to the said High Court may seem meet ; and such Advocates, Vakils and Attorneys shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions.

8. (a) And We do hereby ordain that the High Court of Judicature at Patna shall have power to make rules from time to time for the qualification and admission of proper persons to be Advocates, Vakils and Attorneys-at-law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause, the said Advocates, Vakils or Attorneys-at-law ; and no person whatsoever but such Advocates, Vakils or Attorneys shall be allowed to act or to plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear, plead or act on his own behalf, or on behalf of a co-suitor.

Case-law :—(a) See notes under cl. 8, Allahabad Letters Patent, and cl. 10, Calcutta and Madras Letters Patents.

Civil Jurisdiction of the High Court.

10. (a) And We do further ordain that an appeal shall lie to the High Court of Judicature at Patna from the judgment (not being an order made in the exercise of revisional jurisdiction in a case which has been called for by the said Court, and not being a sentence or order passed or made in the exercise of criminal jurisdiction) of one Judge of the said High Court, or of one Judge of any Division Court constituted in pursuance of section One hundred and eight of the Government of India Act, 1915, and that an appeal shall also lie to the said High Court from the judgment (not being an order or sentence as aforesaid) of two or more Judges of the said High Court, or of any such Division Court, wherever such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being; but that the right of appeal from other judgments of Judges of the said High Court, or of any such Division Court, in such case shall be to Us, Our heirs or successors, in Our or Their Privy Council, as hereinafter provided.

Criminal Jurisdiction.

15. (b) And We do further ordain that the High Court of Judicature at Patna shall have ordinary original criminal jurisdiction in respect of all such persons within the Province of Bihar and Orissa as the High Court of Judicature at Fort William in Bengal had such criminal jurisdiction over immediately before the publication of these presents.

16. And We do further ordain that the High Court of Judicature at Patna, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

17. And We do further ordain that the High Court of Judicature at Patna shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any magistrate or other officer specially empowered by the Government in that behalf.

18. (c) And We do further ordain that there shall be no appeal to the High Court of Judicature at Patna from any sentence or order passed or made by the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

Case-law :—(a) Point not urged before single Judge not to be taken in appeal under clause, 1 Pat. L.J. 485—20 O.W.N. 1303; see notes under cl. 10, Allahabad Letters Patent, and cl. 15, Bombay, Calcutta and Madras Letters Patents. (b) See notes under cl. 23, Madras Letters Patent. (c) See notes under cl. 25, Bombay and Madras Letters Patents.

19. (a) And We do further ordain that, on such point or points of law being so reserved as aforesaid, the High Court of Judicature at Patna shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court may seem right.

20. And We do further ordain that the High Court of Judicature at Patna shall be a Court of Appeal from the criminal Courts of the Province of Bihar and Orissa, and from all other Courts subject to its superintendence and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the High Court of Judicature at Fort William in Bengal by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Patna by any law made by competent legislative authority for India.

21. (b) And We do further ordain that the High Court of Judicature at Patna shall be a Court of reference and revision from the criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges, or by any other officers in the Province of Bihar and Orissa, who were, immediately before the publication of these presents, authorised to refer cases to the High Court of Judicature at Fort William in Bengal, and to revise all such cases tried by any officer or Court possessing criminal jurisdiction in the Province of Bihar and Orissa, as were, immediately before the publication of these presents, subject to reference to or revision by the High Court of Judicature at Fort William in Bengal.

22. (c) And We do further ordain that the High Court of Judicature at Patna shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court.

Criminal Law.

23. And We do further ordain that all persons brought for trial before the High Court of Judicature at Patna, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction, as a Court of appeal, reference or revision, charged with any offence for which provision is made by Act No. XLV of 1860, called the "Indian

Case-law :—(a) See notes under cl. 26, Bombay, Calcutta and Madras Letters Patents. (b) See notes under cl. 28, Bombay and Calcutta Letters Patents. (c) See notes under cl. 29, Bombay, Calcutta and Madras Letters Patents.

Penal Code," or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

Admiralty Jurisdiction.

25. And We do further ordain, that the High Court of Judicature at Patna shall have and exercise in the Province of Criminal. Bihar and Orissa all such criminal jurisdiction as was exercisable therein immediately before the publication of these presents by the High Court of Judicature at Fort William in Bengal as a Court of Admiralty, or otherwise in connection with maritime matters or matters of prize.

Powers of Single Judges and Division Courts.

28. (a) And We do hereby declare that any function which is hereby directed to be performed by the High Court of Judicature at Patna, in the exercise of its original or Single Judges and Division Courts. appellate jurisdiction, may be performed by any Judge, or by any Division Court, thereof, appointed or constituted for such purpose in pursuance of section one hundred and eight of the Government of India Act, 1915; and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there be a majority, but, if the Judges be equally divided, then the opinion of the senior Judge shall prevail.

Criminal Procedure.

30. And We do further ordain that the proceedings in all criminal cases brought before the High Court of Judicature at Regulation of proceedings. Patna, in the exercise of its ordinary original criminal jurisdiction, shall be regulated by the procedure and practice which was in use in the High Court of Judicature at Fort William in Bengal immediately before the publication of these presents, subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure, being an Act, No. V of 1898, passed by the Governor General in Council, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

Appeals to Privy Council.

31. (b) And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or Their Privy Council, in any matter not being of criminal Power to appeal in civil cases. jurisdiction, from any final judgment, decree or order of the High Court of Judicature at Patna made on appeal, and from any

Case-law :—(a) See notes under cl. 27, Allahabad Letters Patent, and cl. 36, Madras Letters Patent. (b) See notes under cl. 39, Bombay, Calcutta and Madras Letters Patents.

final judgment, decree or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal does not lie to the said High Court under the provisions contained in the 10th clause of these presents; provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgment, decree or order involves, directly or indirectly, some claim, demand or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid, when the said High Court declares that the case is a fit one for appeal to Us, Our heirs or successors, in Our or Their Privy Council; but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Province of Bihar and Orissa, except so far as the said existing rules and orders respectively are hereby varied; and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

32. And We do further ordain that it shall be lawful for the High Court of Judicature at Patna, at its discretion, on the motion, or, if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree or order of the said High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs, and successors, in Our or Their Privy Council, subject to the same rules, regulations and limitations as are herein expressed respecting appeals from final judgments, decrees and orders.

33. (a) And We do further ordain that from any judgment, order or sentence of the High Court of Judicature at Patna, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court, in manner provided by the 18th clause of these presents, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order or sentence to appeal to Us, Our heirs or successors, in Council, provided the said High Court declares that the case is a fit one for such appeal, and that the appeal be made under such conditions as the said High Court may establish or require, but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Province of Bihar and Orissa.

34. And We do further ordain that, in all cases of appeal made from any judgment, decree, order or sentence of the High Court of Judicature at Patna to Us, Our heirs or successors, in Our or Their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors, in Our or Their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees and orders had or

Case-law :—(a) See notes under cl. 41, Bombay and Calcutta Letters Patents.

made, in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court. And that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or Their Privy Council a copy of the reasons (*) given by the Judges of such Court, or by any of such Judges, for or against the judgment or determination appealed against. And We do further ordain that the said High Court shall, in all cases of appeal to Us, Our heirs or successors, conform to and execute, or cause to be executed, such judgments and orders as We, Our heirs or successors, in Our or Their Privy Council, may think fit to make in the premises, in such manner as any original judgment, decree or decretal orders, or other order or rule of the said High Court, should or might have been executed.

Exercise of Jurisdiction elsewhere than at the usual place of sitting of the High Court.

35. And We do further ordain that, unless the Governor General in Council otherwise directs, one or more Judges of the High Court of Judicature at Patna shall visit the Division of Orissa, by way of circuit, whenever the Chief Justice from time to time appoints, in order to exercise in respect of cases arising in that Division the jurisdiction and power by these Our Letters Patent, or by or under the Government of India Act, 1915, vested in the said High Court: Provided always that such visits shall be made not less than four times in every year, unless the Chief Justice, with the approval of the Lieutenant-Governor in Council, otherwise directs: Provided also that the said High Court shall have power from time to time to make rules, with the previous sanction of the Lieutenant-Governor in Council, for declaring what cases or classes of cases arising in the Division of Orissa shall be heard at Patna and not in that Division, and that the Chief Justice may, in his discretion, order that any particular case arising in the Division of Orissa shall be heard at Patna or in that Division.

36. And We do further ordain that whenever it appears to the Lieutenant-Governor in Council, subject to the control of Governor General in Council, convenient that the jurisdiction and power by these Our Letters Patent, or by or under the Government of India Act, 1915, vested in the High Court of Judicature at Patna should be exercised in any place within the jurisdiction of any Court subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court, or at several such places by way of circuit, one or more Judges of the Court shall visit such place or places accordingly.

37. And We do further ordain that whenever any Judge or Judges of the High Court of Judicature at Patna visit any place under the 35th or the 36th clause of these presents the proceedings in cases before him or them at such place shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

Case-law :—(a) Grounds of decision to be recorded and transmitted, 12 M.L.A. 495 (503).

Delegation of Duties to Officers.

38. The High Court of Judicature at Patna may from time to time make rules for delegating to any Registrar, Prothonotary or Master or other official of the Court any judicial, quasi-judicial and non-judicial duties.

Power to delegate duties.

Cessation of jurisdiction of the High Court of Judicature at Fort William in Bengal.

39. And We do further ordain that the jurisdiction of the High Court of Judicature at Fort William in Bengal in any matter in which jurisdiction is by these presents given to the High Court of Judicature at Patna shall cease from the date of the publication of these presents, and that all proceedings pending in the former Court on that date in reference to any such matters shall be transferred to the latter Court :

Cessation of jurisdiction of the High Court of Judicature at Fort William over the Province of Bihar and Orissa.

Provided, first, that the High Court of Judicature at Fort William in Bengal shall continue to exercise jurisdiction—

- (a) in all proceedings pending in that Court on the date of the publication of these presents in which any decree or order, other than an order of an interlocutory nature, has been passed or made by that Court, or in which the validity of any such decree or order is directly in question ; and
- (b) in all proceedings [not being proceedings referred to in paragraph (a) of this clause] pending in that Court, on the date of the publication of these presents, under the 13th, 15th, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 32nd, 33rd, 34th, or 35th clause of the Letters Patent bearing date at Westminster the twenty-eighth day of December in the Year of Our Lord One thousand eight hundred and sixty-five, relating to that Court ; and
- (c) in all proceedings instituted in that Court, on or after the date of the publication of these presents, with reference to any decree or order passed or made by that Court :

Provided, secondly, that, if any question arises as to whether any case is covered by the first proviso to this clause, the matter shall be referred to the Chief Justice of the High Court of Judicature at Fort William in Bengal, and his decision shall be final.

Calls for Records, etc., by the Government.

High Court to comply with requisitions from Government for records, etc.

40. And it is Our further will and pleasure that the High Court of Judicature at Patna shall comply with such requisitions as may be made by the Lieutenant-Governor in Council for records, returns, and statements, in such form and manner as he may deem proper.

Powers of Indian Legislatures.

41. And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor General in Legislative Council, and also of the Governor General in Council under section Seventy-one of the Government of India Act, 1915, and also of the Governor General in cases of emergency under section Seventy-two of that Act, and may be in all respects amended and altered thereby.

In witness whereof We have caused these Our Letters to be made patent. Witness Ourselves at Westminster the Ninth day of February in the year of Our Lord One thousand nine hundred and sixteen and in the sixth year of Our reign.

By Warrant under the King's Sign Manual.

(Signed) SCHUSTER.

**THE INDIAN LIFE ASSURANCE COMPANIES
ACT, 1912.**

(ACT VI OF 1912.)

[Passed on the 18th March, 1912.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1882	VI	Indian Companies ...	Am., Act VI of 1912.
1912	VI	Indian Life Assurance Companies...	Am., Act XIII of 1914. Rep. in pt., Act XVII of 1914. Am., Act XXV of 1917.

An Act to provide for the regulation of Life Assurance Companies.

WHEREAS it is expedient to provide for the regulation of life assurance companies; It is hereby enacted as follows:—

Preliminary.

Short title and extent.

1. (1) This Act may be called the Indian Life Assurance Companies Act, 1912.

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "actuary" means an actuary possessing such qualifications as may be prescribed by rules made by the Governor General in Council:

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(2) "chairman" means the person for the time being presiding over the board of directors or other governing body of a life assurance company :

(3) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in the exercise of its ordinary original civil jurisdiction :

(4) "financial years" means each period of twelve months at the end of which the balance of the accounts of the life assurance company is struck, or, if no such balance is struck, then the calendar year :

(5) "life assurance business" means the issue of, or the undertaking of liability under, policies of assurance upon human life, or the granting of annuities upon human life :

(6) "policy of assurance on human life" means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life :

(7) "policy-holder" means the person who for the time being is the legal holder of the policy for securing the contract with the life assurance company :

(8) where a company grants annuities upon human life, "policy" includes the instrument evidencing the contract to pay such an annuity, and "policy-holder" includes annuitant : and

(9) "Registrar" means any person who may be appointed by the Local Government to perform the duties of the Registrar under this Act.

3. Save as hereafter expressly provided, this Act shall apply to all Companies to persons or bodies of persons, whether corporate or which Act applies. unincorporate (which persons and bodies of persons are hereafter referred to as life assurance companies) whether established before or after the commencement of this Act and whether established within or without British India, who carry on life assurance business within British India.

Explanation.—A company registered under the Indian Companies Act, 1882, which carries on life assurance business in any part of the world shall for the purposes of this section be deemed to be a company carrying on such business within British India.

Exception.—Nothing in this Act shall apply to any society to which the Provident Insurance Societies Act, 1912, applies, or to any Fund of 1912. which the Governor General in Council may, by notification in the Gazette of India, exempt from the operation of this Act.

Deposits.

4. (1) Every life assurance company shall, if established before the commencement of this Act, within one year from such Deposit. commencement, or, if established after such commencement, before it commences to carry on the business of life assurance, deposit and keep deposited with the [1] Controller of Currency [1] for

Leg. Changes :—[1] Substituted by Act XIII of 1914.

XIII of 1886: and on behalf of the Governor General in Council, Government securities, as defined by the Indian Securities Act, 1886, of the face value of twenty-five thousand rupees or of a face value equal to one-third of the income derived from life assurance business as shown in the revenue account for the last financial year, whichever is greater; and, until the company keeps deposited securities of the face value of two hundred thousand rupees, shall annually deposit and keep deposited in like manner like securities of a face value—

- (a) equal to one-third of the income derived from life assurance business as shown in the revenue account for the last financial year, until the face value of the securities deposited exceeds one hundred thousand rupees;
- (b) and thereafter equal in amount to one-third of the increase to the life assurance fund as shown in the revenue account for the last financial year:

Provided that a company may at any time deposit securities of a face value of two hundred thousand rupees or make up its deposit of securities to that value.

(2) The interest accruing due on the securities deposited under subsection (1) shall be paid to the company.

(3) The deposit may be made by the subscribers of the memorandum of association of a company or any of them, in the name of a proposed company, and, upon the incorporation of the company, shall be deemed to have been made by, and to be part of the assets of, the company, and the Registrar of Joint Stock Companies shall not issue a certificate of incorporation of the company under the Indian Companies Act, 1882, until the deposit has been made.

VI of 1882.

(4) The deposit shall be deemed to form part of the life assurance fund of the company.

Accounts and Documents.

5. In the case of a life assurance company transacting other business besides that of life assurance, a separate Separation of funds. account shall be kept of all receipts in respect of the life assurance business, and the said receipts shall be carried to and form a separate fund to be called the life assurance fund.

Explanation.—Nothing in this section shall be deemed to require any life assurance fund to be invested in separate investments from any other fund, but a separate balance-sheet as prescribed under section 7 shall be kept in respect of the life assurance fund.

Exception.—Nothing in this section shall apply to a life assurance company established before the commencement of this Act, by the terms of whose deed of settlement the whole of the profits of all the business carried on by the company are paid exclusively to the life policy-holders, and on the face of whose life policies the liability of the life assurance fund in respect of the other business distinctly appears.

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6. The life assurance fund shall be as absolutely the security of the life policy-holders as though it belonged to a company carrying on no other business than life assurance business, and shall not be liable for any contracts of the company for which it would not have been liable, had the business of the company been only that of life assurance, and shall not be applied, directly or indirectly, for any purposes other than those of life assurance.

Exception.—Nothing in this section shall affect the liability of the life assurance fund, in the case of a company established before the commencement of this Act, for contracts entered into by the company before such commencement.

Accounts and balance-sheets. **7.** Every life assurance company shall, at the expiration of each financial year, prepare—

- (a) a revenue account for the year in the form or forms set forth in the First Schedule and applicable to the class or classes of business carried on by the company ;
- (b) a profit and loss account in the form set forth in the second Schedule, except where the company carries on life assurance business only and no other business ;
- (c) a balance-sheet or balance-sheets in the form or forms, set forth in the Third Schedule ;
- (d) a statement containing the name of every person who during the year was a member of the board of directors or other governing body or was manager or secretary or held any similar office by whatever name called.

8. (1) Every life assurance company shall once in every five years, or at such shorter intervals as may be prescribed by the instrument constituting the company, or by its regulations or bye-laws, cause an investigation to be made into its financial condition, including a valuation of its liabilities, by an actuary, and shall cause an abstract of the report of such actuary to be made in the form set forth in the Fourth Schedule.

(2) The provision of sub-section (1) regarding the making of an abstract shall also apply whenever at any other time an investigation into the financial condition of a life assurance company is made with a view to the distribution of profits, or whenever the results of any such investigation are made public.

9. In the case of a mutual life assurance company whose profits are allocated to members wholly or mainly by annual abatements of premium, the abstract of the report of the actuary on the financial condition of the company, prepared in accordance with the Fourth Schedule, may, notwithstanding anything in section 8, be made and returned at intervals not exceeding five years : Provided that, where such return is not made annually, it shall include particulars as to the rates of abatement of premiums applicable to different classes or series of assurances allowed in each year during the period which has elapsed since the previous return under the Fourth Schedule.

10. Every life assurance company shall, within three years from the commencement of this Act, and thereafter at the date to which the accounts of the company are made up for the purposes of the investigation prescribed by section 8, prepare a statement of its assurance business in the form set forth in the Fifth Schedule: Provided that, if the investigation is made annually by any company, the company may prepare such a statement at any time, so that it be made at least once in every five years.

11. (1) Every account, balance-sheet, abstract or statement hereinbefore required to be made shall be printed, and four copies thereof, one of which shall be signed by the chairman and two directors of the company, and by the principal officer of the company, and if the company has a managing director, by the managing director, shall be deposited with the Governor General in Council within six months in the case of accounts and balance-sheets required by section 7, and within one year in other cases after the close of the period to which the account, balance-sheet, abstract or statement relates: Provided that, if in any case it is made to appear to the Governor General in Council that the circumstances are such that a longer period should be allowed, he may extend that period by such period as he may think fit.

(2) The Governor General in Council shall consider any document deposited in accordance with the provisions of sub-section (1), and, if any such document appears to the Governor General in Council to be inaccurate or defective in any respect, the Governor General in Council may call upon the company to furnish a further statement correcting any such inaccuracies or supplying any such deficiencies.

12. There shall be deposited with every revenue-account and balance-sheet of a life assurance company every report on the affairs of the company submitted to the share-holders or policy-holders of the company in respect of the financial year to which the account and balance-sheet relate.

13. Where a life assurance company registered under the Indian Companies Act, 1882, in any year deposits its accounts and balance-sheet in accordance with the provisions of section 11, the company may, at the same time, send to the Registrar of Joint Stock Companies a copy of such accounts and balance-sheet, and, where such copy is so sent, it shall not be necessary for the company to file a balance-sheet with the Registrar of Joint Stock Companies as required by section 74 of the Indian Companies Act, 1882, and the copy of the accounts and balance-sheet so sent shall be dealt with in all respects as if it were a balance-sheet filed in accordance with that section.

14. A printed copy of the accounts, balance-sheet, abstract or statement last deposited shall, on the application of any share-holder or policy-holder of the company, be forwarded to him by the company by post or otherwise.

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15. The accounts of every life assurance company shall be audited annually in such manner as the Governor General in Council may prescribe.

Audit of accounts.

16. Every life assurance company which is not registered under the Indian Companies Act, 1882, shall keep a list of the names and addresses of its share-holders, and shall, on the application of any share-holder or policy-holder of the company, furnish to him a copy of such list on payment of a sum not exceeding two annas for every hundred words required to be copied.

List of share-holders.

17. Every life assurance company which is not registered under the Indian Companies Act, 1882, shall cause a sufficient number of copies of its deed of settlement or other instrument constituting the company to be printed, and shall, on the application of any share-holder or policy-holder of the company, furnish to him a copy of such deed of settlement or other instrument on payment of a sum not exceeding one rupee.

Deed of settlement.

18. Where any notice, advertisement or other official publication of a life assurance company contains a statement of the amount of the authorized capital of the company, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up.

Publication of authorized as well as subscribed and paid-up capital.

19. (1) Every life assurance company, constituted outside British India, which establishes a place of business within British India, or appoints an agent in British India with the object of obtaining life assurance business, shall, within three months from the establishment of the place of business or the appointment of such agent, file with the Registrar—

Requirements as to companies established outside British India.

- (a) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;
- (b) a list of the directors of the company;
- (c) the names and addresses of some one or more persons resident in British India authorized to accept on behalf of the company service of process and any notices required to be served on the company;

and, in the event of any alteration being made in any such instrument or in the list of directors or in the names and addresses of such persons as aforesaid, the company shall, within such time as the Governor General in Council may prescribe, file with the Registrar a notice of the alteration.

(2) Any process or notice required to be served on the company shall be sufficiently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(3) There shall be paid to the Registrar for registering any document, required by this section to be filed, a fee of five rupees or such smaller fee as the Governor General in Council may prescribe.

Amalgamation or Transfer.

20. (1) Where it is intended to amalgamate two or more life assurance companies, or to transfer the life assurance business of one company to another, the directors of any one or more of such companies may apply to the Court, by petition, to sanction the proposed arrangement.

Amalgamation or transfer.

(2) Before any such application is made to the Court—

- (a) notice of the intention to make the application shall be published in the Gazette of India and in the local official Gazette of the Province in which the principal place of business of the company is situate at least two months before the application is made;
- (b) a statement of the nature of the amalgamation or transfer, as the case may be, together with an abstract containing the material facts embodied in the agreement or deed under which the amalgamation or transfer is proposed to be effected, and copies of the actuarial or other reports upon which the agreement or deed is founded, including a report by an independent actuary, shall, unless the Court otherwise directs, be transmitted to each policy-holder of each company; and
- (c) the agreement or deed under which the amalgamation or transfer is effected shall be open for the inspection of the policy-holders and share-holders at the offices of the companies for a period of fifteen days after the last publication of the notice.

(3) The Court, after hearing the directors and other persons whom it considers entitled to be heard upon the petition, may sanction the arrangement if it is satisfied that no sufficient objection to the arrangement has been established.

(4) The Court shall not sanction the amalgamation or transfer in any case in which it appears to the Court that the life policy-holders representing one-tenth or more of the total amount assured in any company which it is proposed to amalgamate, or in any company the business of which it is proposed to transfer, dissent from the amalgamation or transfer.

(5) No life assurance company shall amalgamate with another, or transfer its business to another, unless the amalgamation or transfer is sanctioned by the Court in accordance with this section.

21. Where an amalgamation takes place between any life assurance companies, or where any life assurance business of one such company is transferred to another company, the combined company or the purchasing company, as the case may be, shall, within one month from the date of the completion of the amalgamation or transfer, deposit with the Governor General in Council—

Statement in case of amalgamation or transfer.

- (a) certified copies of statements of the assets and liabilities of the companies concerned in such amalgamation or transfer,

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together with a statement of the nature and terms of the amalgamation or transfer ; and

- (b) a certified copy of the agreement or deed under which the amalgamation or transfer is effected ; and
- (c) certified copies of the actuarial or other reports upon which that agreement or deed is founded ; and
- (d) a declaration under the hand of the chairman of each company, and the principal officer of each company, that to the best of their belief every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth, and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any parties to the amalgamation or transfer.

Winding up.

22. The Court may order the winding up of a life assurance company, in accordance with the Indian Companies Act, 1882, and the provisions of that Act VI of 1882. shall apply accordingly, subject, however, to the modification that the company may be ordered to be wound up—

Special provisions
as to winding up of
assurance com-
panies.

- (a) on the petition of ten or more policy-holders :

Provided that such a petition shall not be presented except by the leave of the Court, and leave shall not be granted until a *prima facie* case has been established to the satisfaction of the Court, and until security for costs for such amount as the Court may think reasonable has been given ; or

- (b) on application made on behalf of the Governor General in Council, showing that from a consideration of the documents deposited with him under the provisions of this Act it appears to him that the company is insolvent.

23. (1) Where a life assurance business or any part of the life assurance business of a life assurance company has been transferred to another company under an arrangement in pursuance of which the first-mentioned company (in this section called the subsidiary company) or the creditors thereof has or have claims against the company to which such transfer was made (in this section called the principal company), then, if the principal company is being wound up by or under the supervision of the Court, the Court shall (subject as hereinafter mentioned) order the subsidiary company to be wound up in conjunction with the principal company, and may by the same or any subsequent order appoint the same person to be liquidator for the two companies, and make provision for such other matters as may seem to the Court necessary, with a view to the companies being wound up as if they were one company.

Winding up of
subsidiary com-
panies.

(2) The commencement of winding up of the principal company shall, save as otherwise ordered by the Court, be the commencement of the winding up of the subsidiary company.

(3) In adjusting the rights and liabilities of the members of the several companies between themselves, the Court shall have regard to the constitution of the companies, and to the arrangements entered into between the companies, in the same manner as the Court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single company, or as near thereto as circumstances admit.

(4) Where any company alleged to be subsidiary is not in process of being wound up at the same time as the principal company to which it is subsidiary, the Court shall not direct the subsidiary company to be wound up unless, after hearing all objections (if any) that may be urged by or on behalf of the company against its being wound up, the Court is of opinion that the company is subsidiary to the principal company, and that the winding up of the company in conjunction with the principal company is just and equitable.

(5) An application may be made in relation to the winding up of any subsidiary company in conjunction with a principal company by any creditor of, or person interested in, the principal or subsidiary company.

(6) Where a company stands in the relation of a principal company to one company, and in the relation of a subsidiary company to some other company, or where there are several companies standing in the relation of subsidiary companies to one principal company, the Court may deal with any number of such companies together or in separate groups as it thinks most expedient upon the principles laid down in this section.

24. Where a life assurance company is being wound up by the Court, or subject to the supervision of the Court, or voluntarily, the value of a policy or of a liability under a policy requiring to be valued in such winding up shall be estimated in manner applicable to policies and liabilities provided by the Sixth Schedule.

25. The rules in the Sixth Schedule shall be of the same force, and may be repealed, altered or amended as if they were rules made in pursuance of section 254 of the Indian Companies Act, 1882, and rules may be made under that section for the purpose of carrying into effect the provisions of this Act with respect to the winding up of life assurance companies.

26. The Court, in the case of a life assurance company which has been proved to be unable to pay its debts, may, if it thinks fit, reduce the amount of the contracts of the company upon such terms and subject to such conditions as it thinks just, in place of making a winding-up order.

Special Provisions relating to Accounts and Documents.

27. The Governor General in Council may direct any documents deposited with him under this Act, or certified copies thereof, to be kept by the Registrar or by any other officer appointed in this behalf, and any such documents and copies shall be open to inspection, and copies thereof may be procured by any person on payment of such fees as the Governor General in Council may direct.

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28. The Governor General in Council shall annually [1] cause to be published in such manner as he may direct, a summary of [4] the accounts, balance-sheets, abstracts, statements and other documents under this Act, or purporting to be under this Act, deposited with him during the preceding year [2] by every life assurance company [2], except reports on the affairs of life assurance companies submitted to the share-holders or policy-holders thereof, and may append to [3] such summary [3], any note of the Governor General in Council thereon and any correspondence in relation thereto.

29. Every document deposited under this Act with the Governor General in Council, and certified by the Registrar or by any person appointed in that behalf by the Governor General in Council to be a document so deposited, shall be deemed to be a document so deposited.

30. Every document purporting to be certified by the Registrar, or by any person appointed in that behalf by the Governor General in Council, to be a copy of a document so deposited, shall be deemed to be a copy of that document, and shall be received in evidence as if it were the original document unless some variation between it and the original document be proved.

31. The Governor General in Council may, on the application or with the consent of a life assurance company, alter the forms contained in the Schedule to this Act as respects that company, for the purpose of adapting them to the circumstances of that company.

Companies carrying on business in the United Kingdom.

32. (1) An assurance company which carries on life assurance business in the United Kingdom in accordance with the Assurance Companies Act, 1909, may, if carrying on life assurance business in British India before the commencement of this Act within three months of such commencement, or, in any other case, before it commences to carry on life assurance business in British India, apply to the Governor General in Council for a declaration that it so carries on such business in the United Kingdom.

(2) A company applying under the provisions of sub-section (1) shall furnish, at the time of its application or at such further time as the Governor General in Council may prescribe, such evidence as he may direct of the facts alleged in its application.

(3) Where the Governor General in Council is satisfied that a life assurance company applying as aforesaid is a life assurance company which carries on business in the United Kingdom in accordance with the Assurance Companies Act, 1909, he shall, by notification in the Gazette of India, make a declaration to that effect, and shall cause such notification to be republished in the local official Gazette of the Province where the company has or proposes to have its principal place of business.

Leg. Changes:—[1] and [3] Substituted by Act XXIV of 1917. [2] Inserted by Act XXIV of 1917.

Application of the Act to companies which carry on Life Assurance business in the United Kingdom.

33. Where the Governor General in Council has notified a declaration in accordance with the provisions of section 32 in respect of a life assurance company, nothing in section 4, section 5, sections 7 to 12, sections 15, 20, 21, or 37 shall apply to the company :

Provided that—

- (1) the company shall deposit with the Governor General in Council in the manner prescribed in section 11, copies of every account, balance-sheet, abstract, statement or other document which the company is required by the Assurance Companies Act, 1909, to deposit at the Board of Trade ;
- (2) if, at any time, a company in respect of which a declaration has been notified under section 32 ceases to carry on life assurance business in the United Kingdom in accordance with the provisions of the Assurance Companies Act, 1909, it shall, if it continues to carry on life assurance business in British India, be subject to all the provisions of this Act from the date it ceased to carry on such business in the United Kingdom in accordance with the said Act.

Penalties and Procedure.

34. Any life assurance company which makes default in complying with any of the requirements of this Act, and every director, manager or secretary, or other officer or agent of the company who is knowingly a party to the default, shall be punishable with fine which may extend to one thousand rupees, or, in the case of a continuing default, with fine which may extend to five hundred rupees for every day during which the default continues ; and, if default continues for a period of three months after notice of default by the Governor General in Council (which notice shall be published in one or more newspapers as the Governor General in Council may, upon the application of one or more policy-holders or shareholders, direct) the default shall be a ground on which the Court may order the winding up of the company, in accordance with the Indian Companies Act, 1882.

35. If any account, balance-sheet, abstract, statement or other document required by this Act is false in any particular to the knowledge of any person who signs it, such person shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

36. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act.

Miscellaneous.

37. (1) The Governor General in Council may appoint one or more inspectors to examine into the affairs of any life assurance company, and to report thereon in such manner as he may direct—

- (i) in the case of a life assurance company which is not registered under the Indian Companies Act, 1882, upon the application—
 - (a) of share-holders being in number not less than one-fifth of the whole number of persons for the time being entered on

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the list of share holders kept in accordance with the provisions of section 16 ; or

- (b) of twenty or more policy-holders owning policies of an aggregate value of not less than twenty thousand rupees ;
- (ii) in any case where a life assurance company has failed to furnish a further statement when required to do so under the provisions of section 11, sub-section (2), or where the Governor General in Council is of opinion that any such further statement is insufficient or unsatisfactory.

(2) On an appointment being made under sub-section (1), the provisions of section 84 of the Indian Companies Act, 1882, shall apply to the VI of 1882. examination made by such inspectors.

38. Any notice or other document which is by this Act required to be sent to any policy-holder may be addressed and sent to the person to whom notices respecting such policy are usually sent, and any notice so addressed and sent shall be deemed and taken to be notice to the holder of such policy :

Provided that where any person claiming to be interested in a policy has given to the company notice in writing of his interest, any notice which is by this Act required to be sent to policy-holders shall also be sent to such person at the address specified by him in his notice.

Powers to make rules. **39.** (1) The Governor General in Council may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the qualifications to be possessed by actuaries, auditors and inspectors under this Act, and the manner in which the accounts of life assurance companies shall be audited ;
- (b) prescribe the time within and the form in which notice of alteration of the particulars specified in section 19 of the Act shall be filed with the Registrar ;
- (c) subject to the provisions of this Act, prescribe the fees payable thereunder.

(3) All rules made under this Act shall be published in the Gazette of India, and, on such publication, shall have effect as if enacted in this Act.

Power of Governor General in Council to delegate to local Governments the powers conferred by this Act. **40.** The Governor General in Council may, by notification in the Gazette of India, and subject to such conditions and restrictions as he thinks fit, delegate to any local Government all or any of the powers (other than the power to make rules under section 39) conferred on him by this Act.

Power of Governor General in Council to exempt from the provisions of the Act. **41.** The Governor General in Council may, by notification in the Gazette of India, and subject to such restrictions and conditions as he thinks fit, exempt any life assurance company from all or any of the provisions of this Act.

42. [1] *

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Leg. Changes :—[1] Repealed by Act XVII of 1914.

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THE FIRST SCHEDULE.

(See section 7.)

REVENUE ACCOUNTS OF THE—FOR THE YEAR ENDING—

(A)—Life Assurance Account.

	RS.		RS.
		Dividends payable on 19 for the year ending 19 . (This is only to be stated here by companies not supplying a Profit and Loss account).	
		Claims under policies paid and outstanding—	
		By death	
		By maturity	
Amount of life assurance fund at the beginning of the year.		Surrenders, including surrenders of bonus additions.	
		Annuities	
		Bonuses in cash	
Premiums		Bonuses in reduction of premiums ...	
		Expenses of management :—	
		Commission	
		Agents' and Canvassers' allowances	
		Salaries, etc. (other than to Agents and Canvassers).	
Consideration for annuities granted* (see Note 1).		Travelling expenses	
		Directors' fees	
		Auditors' fees	
		Medical fees	
Interests, dividends and rents.	RS.	Rents for offices belonging to, and occupied by, the company.	
		Rents of other offices occupied by the company.	
Less income-tax thereon ...		Law charges	
		Advertising	
		Printing and stationery ...	
		Other expenses of management (accounts to be specified).	
Other receipts (accounts to be specified).		Other payments (accounts to be specified).	
		Amount of life assurance fund at the end of the year, as per Third Schedule.	
	RS.		RS.

* NOTE 1.—Companies having a separate annuity fund with investments separate from those of the life assurance fund to return the particulars of their annuity business in a separate statement, in Form B of this Schedule.

NOTE 2.—Items in this account to be net amounts after deduction of the amounts paid and received in respect of re-assurances of the company's risks.

NOTE 3.—If any sum has been deducted from the expenses of management account, and taken credit for in the balance-sheet as an asset, the sum so deducted to be separately shown in the above account.

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(B)—Revenue Account applicable to annuity business of those companies having a separate annuity fund, the investments of which are kept separate from those of the life assurance fund.

Amount of annuity fund at the beginning of the year.	RS.	Annuities	RS.
Consideration for annuities granted		Surrenders	
Interests, dividends and rents.	RS.	Expenses of management:—	
Less income-tax thereon ...		Commission	
Other receipts		Other expenses (to be specified) ...	
		Other payments (accounts to be specified)	
		Amount of annuity fund at the end of the year as per balance-sheet.	
	RS.		RS.

NOTE.—Items in this account to be net amounts after deduction of the amounts paid and received in respect of re-assurances of the company's risks.

(C)—General Revenue Account applicable to all classes of business other than life assurance and annuity transactions.

Amount of funds at the beginning of the year.	RS.	Claims less re-assurances (accounts to be specified).	RS.
Premiums (accounts to be specified)		Expenses of management:—	
Interests, dividends and rents.	RS.	Commission	
Less income-tax thereon ...		Other expenses (to be specified) ...	
Profits (accounts to be specified) ...		Losses (accounts to be specified) ...	
Other receipts (to be specified) ...		Other payments (accounts to be specified).	
		Amount of funds at the end of the year as per balance-sheet.	
	RS.		RS.

NOTE 1.—All the items in the above account to be exclusive of life assurance and annuity transactions.

NOTE 2.—Items in this account to be net amounts after deduction of the amounts paid and received in respect of re-assurances of the company's risks.

Life Assurance ACT VI OF 1912 (LIFE ASS. COMPANIES). 2nd Sch.

(D)—Statement to be submitted along with the Revenue Account by all life assurance companies.

Class of policy.	Total new life assurances completed in India during the year 19 .			Portion thereof reassured.		
	Sum assured.	Annual premium.	Single premium.	Sum assured.	Annual premium.	Single premium.
	RS.	RS.	RS.	RS.	RS.	RS.
Whole life ...						
Whole life by limited payments.						
Endowment assurances.						
Pure endowments ...						
Term assurances ...						
Other classes ...						
Total ...						

State also :—

New annuities (state number and annual amount).

Total sums assured and bonuses (less re-assurances) remaining in force at end of year 19 on lives of residents in India.

Number and amount of annuities (less re-assurances) remaining in force at end of year 19 on lives of residents in India.

Largest sum for which the company has granted an assurance on any one life during the year, after deduction of any portion re-assured.

Statement of the total investments in India of the life assurance and annuity funds.

THE SECOND SCHEDULE.

(See section 7.)

PROFIT AND LOSS ACCOUNT OF THE ——— FOR THE YEAR ENDING ——— 19 .

Balance of last year's account ...	RS.	Dividends and bonuses to share-holders payable on 19 , for the year ending 19 .	RS.
Interest and dividends not carried to other accounts...	RS.	Expenses not charged to other accounts.	
Less income-tax thereon ...		Loss realised (accounts to be specified)	
Profit realized (accounts to be specified).		Other payments (accounts to be specified).	
Other receipts (accounts to be specified).		Balance as per Third Schedule ...	
	RS. ...		RS. ...

THE THIRD SCHEDULE.

(See section 7.)

(A)—BALANCE-SHEET—OF THE—ON THE—19 .

Liabilities.	—	Assets.	—
	RS.		RS.
Life assurance fund—		Assets of life assurance fund as per separate balance-sheet (if any).	
Outstanding liabilities of life assurance fund.		Assets of annuity fund as per separate balance-sheet (if any).	
		Assets of funds other than those shown in the above-mentioned balance-sheets.	
		Mortgages on property within India ...	
		Do. do. out of India ...	
Annuity fund (if any) as per separate balance-sheet.		Loans on public rates ...	
		Do. life interests and reversions ...	
Outstanding liabilities of annuity fund.		Do. stocks and shares ...	
		Do. company's policies within their surrender values.	
		Do. personal security ...	
		Investments—	
		Deposit with the [1] Controller of Currency [1] (securities to be specified).	
Share-holders' capital paid up (if any).		Indian Government securities ...	
		British and Colonial Government securities.	
Profit and loss account (if any).		Foreign Government securities ...	
		Indian Municipal and Provincial securities.	
Funds contained in General Revenue Account (if any) [Schedule I (C).]		British and Colonial securities ...	
		Foreign do. do. ...	
		Bonds, debentures, stocks and other securities whereon interest is guaranteed by the Indian Government.	
Other sums owing by the Company.		Bonds, debentures, stocks and other securities whereon interest is guaranteed by the British or any Colonial Government.	
(Accounts to be specified and stated separately under each class of business).		Bonds, debentures, stocks and other securities whereon interest is guaranteed by any Foreign Government.	
		Ordinary stocks and shares of any Indian Presidency Bank.	
		Debentures of any Railway in India ...	
		Debentures of any Railway out of India.	
		Preference or guaranteed shares of any Railway in India.	
		Preference or guaranteed shares of any Railway out of India.	
		Ordinary stocks and shares of any Railway in India.	
		Ordinary stocks and shares of any Railway out of India.	
		House property in India. ...	
		House property out of India. ...	
		Freehold and lease-hold ground rents and rent charges in India.	

Leg. Changes :—[1] Substituted by Act XIII of 1914.

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(A)—BALANCE-SHEET—OF THE—ON THE—19
—(Concluded.)

Liabilities.	—	Assets.	—
	RS.		RS.
		Life interests and reversions in India ...	
		Do. do. out of India...	
		Other investments in India (to be specified).	
		Other investments out of India (to be specified).	
		Agents' balances ...	
		Outstanding premiums*	
		Do. interests, dividends and rents.*	
		Interest accrued but not payable *	
		Bills receivable ...	
		Cash—	
		On deposit ...	
		In hand and on current account ...	
		Other assets (to be specified) ...	
	RS.		RS.

* These items are or have been included in the corresponding items in the First Schedule.

NOTE 1.—When part of the assets of the company are specifically deposited under local laws in various places out of India, as security to holders of life assurance policies there issued, each such place and the amount compulsorily lodged therein must be specified.

NOTE 2.—The balance-sheet must state how the values of the stock exchange securities are arrived at, and on the occasions when a statement respecting valuation under the Fourth Schedule is made, a certificate must be appended, signed by the same persons as signed the balance-sheet, to the effect that in their belief the assets set forth in the balance-sheet are in the aggregate fully of the value stated therein, less any investment reserve fund taken into account.

NOTE 3.—Companies having investments with any uncalled liability shall state separately the full amount thereof.

NOTE 4.—Particulars must be given of all loans, including temporary advances, except loans on policies within their surrender values, made at any time during the year to any director or officer of a company or to any other company in which any of the said directors or officers may hold the position either of director or of officer.

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(B)—BALANCE-SHEET OF THE LIFE ASSURANCE FUND—ON
THE—19—, TO BE COMPLETED BY COMPANIES
DOING BUSINESS OTHER THAN LIFE ASSURANCE FOR WHICH
THEY HAVE SEPARATE FUNDS.

Liabilities.	—	Assets.	—
	RS.		RS.
Life assurance fund ...		Mortgages on property within India ...	
Claims admitted or intimated * but not paid.		Do. do. out of India ...	
Other sums owing by the com- pany * (under this class of business).		Loans on public rates ...	
		Do. life interests and reversions ...	
		Do. stocks and shares ...	
		Do. company's policies within their surrender values.	
		Do. personal security ...	
		Investments—	
		Deposit with the [1] Controller of Cur- rency [1] (securities to be specified).	
		Indian Government securities ..	
		British and Colonial Government securi- ties.	
		Foreign Government securities ...	
		Indian Municipal and Provincial securi- ties.	
		British and Colonial securities ...	
		Foreign do. do. ...	
		Bonds, debentures, stocks and other securities whereon interest is guaran- teed by the Indian Government.	
		Bonds, debentures, stocks and other securities whereon interest is guaran- teed by the British or any Colonial Government.	
		Bonds, debentures, stocks and other securities whereon interest is guaran- teed by any Foreign Government.	
		Ordinary stocks and shares of any Indian Presidency Bank.	
		Debentures of any Railway in India ...	
		Debentures of any Railway out of India.	
		Preference or guaranteed shares of any Railway in India.	
		Preference or guaranteed shares of any Railway out of India.	
		Ordinary stocks and shares of any Railway in India.	
		Ordinary stocks and shares of any Railway out of India.	
		House property in India ...	
		Do. out of India ...	
		Freehold and leasehold ground rents and rent-charges in India.	

* These items are or have been included in the corresponding items in the First Schedule.

Leg. Changes:—[1] Substituted by Act XIII of 1914.

Life Assurance ACT VI OF 1912 (LIFE ASS. COMPANIES). 3rd Sch.

(B)—BALANCE-SHEET OF THE LIFE ASSURANCE FUND—ON THE _____ 19 _____, TO BE COMPLETED BY COMPANIES DOING BUSINESS OTHER THAN LIFE ASSURANCE FOR WHICH THEY HAVE SEPARATE FUNDS—(Concluded.)

Liabilities.	—	Assets.	—
	RS.		RS.
		Life interests and reversions in India ...	
		Do. do. out of India	
		Other investments in India (to be specified),	
		Do. out of India (to be specified).	
		Agents' balances	
		Outstanding premiums*	
		Do. interests, dividends and rents*	
		Interest accrued but not payable* ...	
		Bills receivable	
		Cash—	
		On deposit	
		In hand and on current account ...	
		Other assets (to be specified)	
	RS.		RS.

* These items are or have been included in the corresponding items in the First Schedule.

NOTE 1.—When part of the assets of the company are specifically deposited under local laws in various places, out of India, as security to holders of life assurance policies there issued, each such place and the amount compulsorily lodged therein must be specified.

NOTE 2.—A balance-sheet in the above form must be rendered in respect of the annuity fund if the investments of that fund are distinct from those of the life assurance fund.

NOTE 3.—The balance-sheet must state how the values of the stock exchange securities are arrived at, and on the occasions when a statement respecting valuation under the Fourth Schedule is made, a certificate must be appended, signed by the same persons as signed the balance sheet, to the effect that in their belief the assets set forth in the balance sheet are in the aggregate fully of the value stated therein, less any investment reserve fund taken into account.

NOTE 4.—A certificate must be appended hereto, signed by the same persons as signed the balance-sheet (Form A), and by the auditor, to the effect that no part of any such fund has been applied, directly or indirectly, for any purpose other than the class of business to which it is applicable.

NOTE 5.—Companies having investments with any uncalled liability shall state separately the full amount thereof.

NOTE 6.—Particulars must be given of all loans, including temporary advances, except loans on policies within their surrender values, made at any time during the year to any director or officer of a company, or to any other company in which any of the said directors or officers may hold the position either of director or of officer

THE FOURTH SCHEDULE.

(See sections 8 and 9.)

STATEMENT RESPECTING THE VALUATION OF THE LIABILITIES UNDER LIFE POLICIES AND ANNUITIES OF THE———, TO BE MADE AND SIGNED BY THE ACTUARY.

(The answers should be numbered to accord with the numbers of the corresponding questions.)

1. The date up to which the valuation is made.

2. The general principles adopted in the valuation, and the method followed in the valuation of particular classes of assurances, including a statement of the method by which the net premiums have been arrived at, and whether these principles were determined by the instrument constituting the company or by its regulations or bye-laws, or how otherwise; together with a statement of the manner in which policies on under average lives are dealt with.

3. The table or tables of mortality used in the valuation. In cases where the tables employed are not published, specimen policy values are to be given, at the rate of interest employed in the valuation, in respect of whole-life assurance policies effected at the respective ages of 20, 30, 40 and 50, and having been respectively in force for 5 years, 10 years, and upwards at intervals of five years, respectively; with similar specimen policy values in respect of endowment assurance policies according to age at entry, original term of policy and duration.

4. The rate or rates of interest assumed in the calculations.

5. The actual proportion of the annual premium income (if any), reserved as a provision for future expenses and profits, separately specified in respect of assurances with immediate profits, with deferred profits, and without profits. (If none, state how this provision is made).

6. The consolidated revenue-account since the last valuation, or, in case of a company which has made no valuation, since the commencement of the business. (This return should be made in the form annexed. No return under this heading will be required where a statement under this schedule is deposited annually).

7. The liabilities of the company under life policies and annuities at the date of the valuation, showing the number of policies, the amount assured and the amount of premiums payable annually under each class of policies, both with and without participation in profits; and also the net liabilities and assets of the company with the amount of surplus or deficiency. (These returns to be made in the forms annexed.)

8. The principles upon which the distribution of profits among the share-holders and policy-holders is made, and whether these principles were determined by the instrument constituting the company or by its regulations or bye-laws, or how otherwise, and the number of years' premiums to be paid before a bonus (a) is allotted, and (b) vests.

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9. The results of the valuation, showing—

(1) the total amount of profit made by the company, allocated as follows :—

- (a) among the policy-holders with immediate participation, and the number and amount of the policies which participated
- (b) among policy-holders with deferred participation, and the number and amount of the policies which participated ;
- (c) among the share-holders ;
- (d) to reserve funds, or other accounts ;
- (e) carried forward unappropriated ;

(2) specimens of bonuses allotted to whole life assurance policies for Rs. 1,000 effected at the respective ages of 20, 30, 40 and 50, and having been respectively in force for 5 years, 10 years, and upwards at intervals of 5 years respectively, together with the amounts apportioned under the various modes in which the bonus might be received ; with similar specimen bonuses and particulars in respect of endowment assurance policies, according to age at entry, original term of policy, and duration.

(FORM REFERRED TO UNDER HEADING NO. 6 IN FOURTH SCHEDULE.)

Consolidated Revenue Account of the——— for——— years commencing——— and ending———.

	RS.		RS.
Amount of life assurance fund at the beginning of the period.		Claims under policies paid and outstanding :—	RS.
Premiums		By death	
Consideration of annuities granted...		By maturity	
	RS.	Surrenders	
Interest, dividends and rents.		Annuities	
Less income-tax thereon.		Bonuses in cash	
Other receipts (accounts to be specified).		Do. reduction of premiums	
		Commission	
		Expenses of management	
		Other payments (accounts to be specified).	
		Amount of life assurance fund at the end of the period as per Third Schedule.	
	RS.		RS.

NOTE.—If any sum has been deducted from the expenses of management account and taken credit for in the balance-sheet as an asset, the sum so deducted to be separately shown in the above statement.

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(FORM REFERRED TO UNDER HEADING NO. 7 IN FOURTH SCHEDULE.)

Summary and valuation of the policies of the _____ as at _____ 19 .

	Particulars of the policies for valuation.				Valuation.			
	Number of policies.	Sums assured and bonuses.	Office yearly premiums.	Net yearly premiums.	Sums assured and bonuses.	Office yearly premiums.	Net yearly premiums.	Table, interest per cent.
ASSURANCES.								
I.— <i>With immediate participation in profits.</i>								
For whole term of life ...								
Other classes (to be specified).								
Extra premiums payable ...								
II.— <i>With deferred participation in profits.</i>								
For whole term of life ...								
Other classes (to be specified).								
Extra premiums payable ...								
Total assurances with profits.								
III.— <i>Without participation in profits.</i>								
For whole term of life ...								
Other classes (to be specified).								
Extra premiums ...								
Total assurances without profits								
Total assurances ...								
Deduct re-assurances (to be specified according to class in a separate statement).								
Net amount of assurances								
Adjustments, if any (to be separately specified).								
ANNUITIES ON LIVES.								
Immediate ...								
Other classes (to be specified).								
Total of the results ...								

NOTE 1.—The term "extra premium" in this Act shall be taken to mean the charge for any risk not provided for in the minimum contract premium. If policies are issued in or for any country at rates of premium deduced from tables other than the European mortality tables adopted by the company, separate schedules similar in form to the above must be furnished.

NOTE 2.—Separate returns and valuation results must be furnished in respect of classes of policies valued by different tables of mortality, or at different rates of interest, also for business at other than European rates.

NOTE 3.—In cases also where separate valuations of any portion of the business are required under local laws in places outside British India, a summary statement must be furnished in respect of the business so valued in each such place showing the total number of policies, the total sums assured and bonuses, the total office yearly premiums and the total net liability on the bases as to mortality and interest adopted in each such place, with a statement as to such bases, respectively.

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(FORM REFERRED TO UNDER HEADING NO. 7 IN FOURTH SCHEDULE.)

Valuation Balance-sheet of _____ *as at* _____ **19** .

DR.	RS.	CR.	RS.
To net liability under life assurance and annuity transactions (as per summary statement provided in Fourth Schedule).		By life assurance and annuity funds (as per balance sheet under Third Schedule).	
To surplus, if any	...	By deficiency, if any	...

THE FIFTH SCHEDULE.

(See section 10.)

STATEMENT OF THE LIFE ASSURANCE AND ANNUITY BUSINESS OF THE _____ ON THE 19 _____, TO BE SIGNED BY THE ACTUARY.

(The answers should be numbered to accord with the numbers of the corresponding questions. Statements of re-assurances corresponding to the statements in respect of assurances are to be given throughout.) Separate statements are to be furnished in the replies to all the headings under this Schedule for business at other than European rates.

1. The published table or tables of premiums for assurances for the whole term of life and for endowment assurances which are in use at the date abovementioned.

2. The total amount assured on lives for the whole term of life which are in existence at the date abovementioned, distinguishing the portions assured with immediate profits, with deferred profits, and without profits, stating separately the total reversionary bonuses and specifying the sums assured for each year of life from the youngest to the oldest ages, the basis of division as to immediate and deferred profits being stated.

3. The amount of premiums receivable annually for each year of life, after deducting the abatements made by the application of bonuses in respect of the respective assurances mentioned under Heading No. 2, distinguishing ordinary from extra premiums. A separate statement is to be given of premiums payable for a limited number of years, classified according to the number of years' payments remaining to be made.

4. The total amount assured under endowment assurances, specifying sums assured and office premiums separately in respect of each year in which such assurances will mature for payment. The reversionary bonuses must also be separately specified, and the sums assured with immediate profits, with deferred profits, and without profits separately returned.

5. The total amount assured under classes of assurance business, other than assurances dealt with under questions 2 and 4, distinguishing the sums assured under each class and stating separately the amount assured with immediate profits, with deferred profits, and without profits, and the total amount of reversionary bonuses.

6. The amount of premiums receivable annually in respect of each such special class of assurances mentioned under Heading No. 5 distinguishing ordinary from extra premiums.

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7. The total amount of premiums which has been received from the commencement upon pure endowment policies which are in force at the date abovementioned.

8. The total amount of immediate annuities on lives, distinguishing the amounts for each year of life, and distinguishing male and female lives.

9. The amount of all annuities on lives other than those specified under Heading No. 8, distinguishing the amount of annuities payable under each class, and the amount of premiums annually receivable.

10. The average rate of interest yielded by the assets, whether invested or uninvested, constituting the life assurance fund of the company, calculated upon the mean fund of each year during the period since the last investigation, without deduction of income-tax.

It must be stated whether or not the mean fund upon which the average rate of interest is calculated includes reversionary investments.

11. A table of minimum values, if any, allowed for the surrender of policies for the whole term of life and for endowments and endowment assurances, or a statement of the method pursued in calculating such surrender values, with instances of the application of such method to policies of different standing and taken out at various interval ages from the youngest to the oldest.

THE SIXTH SCHEDULE.

(See sections 24 and 25.)

RULES FOR VALUING ANNUITIES, LIFE POLICIES AND LIABILITIES.

Rule for valuing an annuity.

An annuity shall be valued according to the tables used by the company which granted such annuity at the time of granting the same, and, where such tables cannot be ascertained or adopted to the satisfaction of the Court, then according to such rate of interest and table of mortality as the Court may direct.

Rule for valuing a policy.

The value of the policy is to be the difference between the present value of the reversion in the sum assured according to the contingency upon which it is payable, including any bonus or addition thereto made before the commencement of the winding up, and the present value of the future annual premiums.

In calculating such present values interest is to be assumed at such rate, and the rate of mortality according to such tables, as the Court may direct.

The premium to be calculated is to be such premium as according to said rate of interest and rate of mortality is sufficient to provide for the risk incurred by the office in issuing the policy, exclusive of any addition thereto for office expenses and other charges.

Rule for valuing a liability.

The liquidator, in the case of all persons appearing by the books of the company to be entitled to or interested in policies granted by such company, is to ascertain the value of the liability of the company to each such person, and give notice of such value to such persons in such manner as the Court may direct, and any person to whom notice is so given shall be bound by the value so ascertained unless he gives notice of his intention to dispute such value in manner and within a time to be prescribed by a rule or order of the Court.

THE INDIAN LIMITATION ACT, 1908.

(ACT IX OF 1908.)

[Passed on the 7th August, 1908.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1848	XIII	Limitation (Bengal)	Rep., Act VIII of 1868.
1859	XIV	Limitation	Rep. in pt., Act IX of 1871.
1861	XXXII	Do.	Rep., "I of 1877.
1871	IX	Do.	Rep., Act VIII of 1868.
			" " XV of 1877.
For further Acts affected, see the third schedule to this Limitation Act (IX of 1908).			
1908	IX	Limitation	Rep. in pt., Act XVII of 1914.

An Act to consolidate and amend the law for the Limitation of Suits, and for other purposes.

WHEREAS it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called the Indian Limitation Act^(a), 1908.

(2) It extends to the whole of British India; and

(3) This section and section 31 shall come into force at once. The rest of this Act shall come into force on the first day of January, 1909.

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PART II.

LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

Dismissal of suits, etc., instituted, etc., after period of limitation. 3. Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up^(b) as a defence.

Case-law :—(a) As to application of rules of limitation to criminal cases, see 10 A. 350; 20 B. 543; Act does not apply to application under S. 195 (6), Cr. P.C., 8 S.L.R. 49=15 Cr. L.J. 654; Act to be applied as strictly in criminal cases as in civil cases, A.W.N. (1891) 10. (b) Enough if point arises on face of record and requires no development, 9 C.W.N. 56; 269 P.L.R. 1914.

4. Where the period of limitation prescribed (a) for any suit, appeal or application expires on a day when the Court (b) is closed, the suit, appeal or application may be instituted, preferred (c) or made on the day that the Court re-opens (d).

Where Court is closed when period expires.

5. Any appeal or application for a review of judgment or for leave to appeal or any other application (e) to which this section may be made applicable by any enactment or rule for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court (f) that he had sufficient cause (g) for not preferring the appeal or making the application within such period.

Extension of period in certain cases.

Explanation.—The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

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PART III.

COMPUTATION OF PERIOD OF LIMITATION.

12. (1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

Exclusion of time in legal proceedings.

(2)(h) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time (i) requisite for obtaining a copy (j) of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

Case-law :—(a) Means prescribed by first schedule, 15 Ind. Cas. 439. (b) Means Court having jurisdiction, 36 M. 131. (c) Petition of criminal appeal may be presented by person authorized by appellant, 1 M. 304; presentation of appeal petition to officer in charge of jail by prisoner, is presentation to Court, U B.R. (1892-1896), Vol. I, 129; *ibid*, 130; 29 P.R. 1890, Cr.; 9 M. 258. (d) See 2 N.W.P. 112; if period of sanction under S. 195, Cr. P.C., expires during Court holiday complaint may be instituted on day when Court reopens, 2 Weir 200, but see 22 C. 176, *contra*. (e) Section does not apply to—under S. 17 of Press Act (I of 1910), 16 P.R. 1914, Cr.=126 P.L.R. 1914; limitation for such—starts from date of forfeiture order, *ibid*. (f) must be fully satisfied, 30 B. 329; 9 A.L.J. 292; 16 C.L.J. 366. (g) What is—depends upon circumstances of each case, 10 O.L.J. 37; words—to be liberally construed in absence of negligence in action or want of *bona fides* on appellant's part, 13 M. 269; 9 Bom. L.R. 893; 13 A.L.J. 1101; 19 M.L.J. 209; *bona fide* mistake of law, may be, (1917) M.W.N. 362; but not mistake avoidable by ordinary diligence, *ibid*; acquittal in appeal of one of several persons convicted together may be—for admitting appeal presented out of time, 7 P.R. 1871, Cr.; appellant's ignorance of existence of right of appeal or belief that appeal would be preferred by his relatives, is not a—A.W. N. (1891) 10. (h) Section inapplicable in computing period of sanction under S. 195, Cr. P.C., 1 Weir 789=2 Weir 200. (i) See U.B.R., 1896, Vol. I, 129; *ibid*., 130, 5; 10 C. 642; 6 M.H.C. 349; 5 P.R. 1888, Cr.; as to computation of time, see 28 M. 252; 5 L.B.R. 15; —cannot be deducted twice over, 12 Ind. Cas. 677; begins only after application for copy, 7 N.L.R. 57; 15 Bom. L.R. 681; day on which copy was delivered not to be deducted in addition to day on which it was ready, 10 S.L.R. 165; but delay in obtaining copies not attributable to party to be deducted, 6 M.H.C. 349; 11 P.W. R. 1912; —includes time taken in forwarding application for copy by prisoner in jail and in transmission of copy from Court to jail, 9 M. 259; also interval between application for copy and despatch by post, 8 N.L.R. 11; *ibid*, 172; 9 N.L.R. 91; (j) Application for—need not be made by party himself, 23 Ind. Cas. 209.

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18.(a) Where any person having a right to institute a suit or make an application (b) has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, or where any document necessary to establish such right has been fraudulently concealed from him, the time limited for instituting a suit or making an application—

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

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THE FIRST SCHEDULE.

(See section 3.)

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SECOND DIVISION: APPEALS.

	Description of appeal.	Period of limitation.	Time from which period begins to run.
V of 1898.	150—Under the Code of Criminal Procedure, 1898, from a sentence of death passed by a Court of Session.	Seven days ...	The date of the sentence.
	* * *	* *	* * *
V of 1898.	154—Under the Code of Criminal Procedure, 1898, to any Court other than a High Court.	Thirty days ...	The date of the sentence or order appealed from.
	155—Under the same Code (c) to a High Court, except in the cases provided for by article 150 and article 157.	Sixty days ...	Do. do.
	* * *	* *	* * *
V of 1898.	157(d)—Under the Code of Criminal Procedure, 1898, from an order of acquittal.	Six months ...	The date of the order appealed from.
	* * *	* *	* *

Case-law:—(a) Section does not apply to criminal cases, 20 B. 543. (b) Complaint of offence is not a suit or—, 20 B. 543. (c) Article does not apply to appeal under Extradition Act, 15 M. 414=2 M.L.J. 142. (d) Article is subject to provisions of S. 5, 1 Weir 791=2 Weir 462.

THE INDIAN LUNACY ACT, 1912.

(ACT IV OF 1912.)

[Passed on the 16th March, 1912.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1858	XXXIV	Lunacy (Supreme Courts) Act ...	Rep., Act IV of 1912.
1858	XXXV	Lunacy (District Courts) Act ...	Do. do.
1858	XXXVI	Indian Lunatic Asylums Act ...	Do. do.
1877	XI	Military Lunatics Act ...	Do. do.
1886	XVIII	Indian Lunatic Asylums Act (1858) Amendment Act ...	Do. do.
1889	XX	Indian Lunatic Asylums Act (1858) Amendment Act. ...	Do. do.
1894	XIII	Amending (Army) Act ...	Rep. in pt., Act IV of 1912.
1898	V	Code of Criminal Procedure ...	Do. do.
1909	V	Amending (Army) Act ...	Do. do.
1912	IV	Indian Lunacy ...	Rep. in pt., Act XVII of 1914. Am., Act XII of 1916.

An Act to consolidate and amend the law relating to Lunacy.

WHEREAS it is expedient to consolidate and amend the law relating to lunacy; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

CHAPTER I.

Short title and extent. 1. (1) This Act may be called the Indian Lunacy Act, 1912.

(2) It extends to the whole of British India, including British Baluchistan, the Santhal Parganas, and the Pargana of Spiti.

2. Nothing contained in Part II shall be deemed to affect the powers of any High Court which is or hereafter may be established under the Indian High Courts Acts, 24 & 25 Vict., 1861 to 1911, over any person found to be a lunatic by inquisition or over the property of such lunatic, or the rights of any person appointed by such Court as guardian of the person or manager of the estate of such lunatic. Geo. V. c. 18.

Definitions. 3. In this Act, unless there is anything repugnant in the subject or context,—

- (1) "asylum" means an asylum for lunatics established or licensed by Government;
- (2) "cost of maintenance" in an asylum includes the cost of lodging, maintenance, clothing, medicine and care of a lunatic

and any expenditure incurred in removing such lunatic to and from an asylum :

- (3) " District Court " means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Presidency-towns :
- (4) " criminal lunatic " means any person for whose confinement in, or removal to an asylum, jail or other place of safe custody an order has been made in accordance with the provisions of section 466 or section 471 of the Code of Criminal Procedure, 1898, or of section 30 of the Prisoners Act, 1900 :
- (5) " lunatic " means an idiot or person of unsound mind (a) :
- (6) " Magistrate " means a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or a Magistrate of the first class specially empowered by the Local Government to perform the functions of a Magistrate under this Act :
- (7) " medical officer " means a gazetted medical officer of Government, and includes a medical practitioner declared by general or special order of the Local Government to be a medical officer for the purposes of this Act :
- (8) " medical practitioner " means a holder of a qualification to practise medicine and surgery which can be registered in the United Kingdom in accordance with the law for the time being in force for the registration of medical practitioners, and includes any person declared by general or special order of the Local Government to be a medical practitioner for the purposes of this Act :
- (9) " prescribed " means prescribed by this Act or by rule made thereunder :
- (10) " reception order " means an order made under the provisions of this Act for the reception into an asylum of a lunatic other than a lunatic so found by inquisition :
- (11) " relative " includes any person related by blood, marriage or adoption : and
- (12) " rule " means a rule made under this Act.

PART II.

RECEPTION, CARE AND TREATMENT OF LUNATICS.

CHAPTER II.

RECEPTION OF LUNATICS.

4. (1) No person other than a criminal lunatic or a lunatic so found by inquisition shall be received or detained in an asylum without a reception order save as provided by sections 8, 16 and 98 :

Reception of persons in asylum.

Provided that any person in charge of an asylum may, with the consent of two of the visitors of such asylum, which consent shall not be

Case-law :—(a) Includes imbecility, lunacy or mental aberration, 7 B. 16 ; but does not include mere weakness of intellect, 4 C.L.J. 115.

given except upon a written application from the intending boarder, receive and lodge as a boarder in such asylum any person who is desirous of submitting himself to treatment.

(2) A boarder received in an asylum under the proviso to subsection (1) shall not be detained in the asylum for more than twenty-four hours after he has given to the person in charge of the asylum notice in writing of his desire to leave such asylum.

Reception orders on petition.

5. (1) An application for a reception order shall be made by petition accompanied by a statement of particulars to the Magistrate within the local limits of whose jurisdiction the alleged lunatic ordinarily resides, shall be in the form prescribed and shall be supported by two medical certificates on separate sheets of paper, one of which certificates shall be from a medical officer.

(2) If either of the medical certificates is signed by any relative, partner or assistant of the lunatic or of the petitioner, the petition shall state the fact, and, where the person signing is a relative, the exact manner in which he is related to the lunatic or petitioner.

(3) The petition shall also state whether any previous application has been presented for an inquiry into the mental capacity of the alleged lunatic in any Court; and if such application has been made, a certified copy of the order made thereon shall be attached to the petition.

(4) No application for a reception order shall be entertained in any area outside the Presidency-towns unless the Local Government has, by notification in the local official Gazette, declared such area as an area in which reception orders may be made.

Application by whom to be presented. 6. (1) The petition shall be presented, if possible, by—

- (a) the husband or wife of the alleged lunatic, or
- (b) by any other relative of his.

(2) If the petition is not so presented, it shall contain a statement of the reasons why it is not so presented, and of the connection of the petitioner with the alleged lunatic, and the circumstances under which he presents the petition.

(3) No person shall present a petition unless he has attained the age of majority as determined by the law to which he is subject, and has within fourteen days before the presentation of the petition, personally seen the said lunatic.

(4) The petition shall be signed and verified by the petitioner, and the statement of prescribed particulars by the person making such statement.

Procedure upon petition for reception order. 7. (1) Upon the presentation of the petition the Magistrate shall consider the allegations in the petition and the evidence of lunacy appearing by the medical certificates.

(2) If he considers that there are grounds for proceeding further, he shall personally examine the alleged lunatic unless for reasons to be recorded in writing he thinks it unnecessary or inexpedient so to do.

(3) If he is satisfied that a reception order may properly be made forthwith, he may make the same accordingly.

(4) If he is not so satisfied, he shall fix a date (notice whereof shall be given to the petitioner and to any other person to whom in the opinion of the Magistrate notice should be given) for the consideration of the petition, and he may make such further or other inquiries of or concerning the alleged lunatic as he thinks fit.

Detention of alleged lunatic pending inquiry.

8. Upon the presentation of the petition, the Magistrate may make such order as he thinks fit for the suitable custody of the alleged lunatic pending the conclusion of the inquiry.

9. The petition shall be considered in private in the presence of the petitioner, the alleged lunatic (unless the Magistrate in his discretion otherwise directs), any person appointed by the alleged lunatic to represent him and such other persons as the Magistrate thinks fit.

10. (1) At the time appointed for the consideration of the petition, the Magistrate may either make a reception order or dismiss the petition, or may adjourn the same for further evidence or inquiry, and may make such order as to the payment of the costs of the inquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic if found to be of unsound mind, or otherwise as he thinks fit.

(2) If the petition is dismissed, the Magistrate shall record in writing his reasons for dismissing the same, and shall deliver or cause to be delivered to the petitioner a copy of such order.

Further provisions as to reception orders on petition.

11. No reception order shall be made under section 7 or section 10, save in the case of a lunatic who is dangerous and unfit to be at large, unless—

- (a) the Magistrate is satisfied that the person in charge of an asylum is willing to receive the lunatic, and
- (b) the petitioner or some other person engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic.

[1] 11-A. (1) When an arrangement has been made with any foreign European State with respect to the reception of lunatics in asylums in British India, the Governor General in Council may, by notification in the Gazette of India, direct that reception orders may be made under this Act in the case of any lunatic or class of lunatics residing in the territories in India of such foreign European State, and shall in such notification specify the province or provinces within which such reception orders may be made.

Reception order in case of lunatics from foreign States in India.

(2) On publication of a notification under sub-section (1), the provisions of this Act as to the making of reception orders on petition and for temporary detention in suitable custody shall apply in the case of such lunatics, with the following modifications, namely :—

- (a) an application for a reception order may be made by petition presented by such officer or agent of the foreign State in which the alleged lunatic ordinarily resides, as may by general or special order be approved by the Local Government in this behalf;
- (b) the functions of the Magistrate shall be performed by such officer as the Local Government may, by general or special order, appoint in this behalf, and such officer shall be deemed to be the Magistrate having jurisdiction over the alleged lunatic for all the purposes of the said provisions;
- (c) for the purposes of sections 5 and 18 (1), the expressions "medical officer" and "medical practitioner" shall include such person or class of persons as the Local Government may specify in this behalf;
- (d) the Magistrate may in his discretion extend the period prescribed by section 19 within which the alleged lunatic must have been medically examined; and
- (e) sections 6 (1), (2), (3), 11 and 34 of the Act shall not apply,

and with such other modifications, restrictions or adaptations as the Governor General in Council may, by notification in the Gazette of India, direct for the purpose of facilitating the application of the said provisions.

(3) A reception order made under this section shall be deemed to be a reception order under section 7 or section 10, as the case may be.

Reception orders otherwise than on petition.

12. When any European who is subject to the provisions of the

Reception order
in case of lunatic
soldier.

Army Act has been declared a lunatic in accordance with the provisions of the military regulations in force for the time being, and it appears to any administrative medical officer that he should be removed to an asylum,

such administrative medical officer may, if he thinks fit, make a reception order under his hand for the admission of the said lunatic into any asylum which has been duly authorized for the purpose by the Governor General in Council.

Powers and duties
of police in respect
of wandering or
dangerous lunatics
and lunatics cruelly
treated or not under
proper care and con-
trol.

13. (1) Every officer (a) in charge of a police-station may arrest or cause to be arrested all persons found wandering at large within the limits of his station whom he has reason to believe to be lunatics (b), and shall arrest or cause to be arrested all persons within the limits of his station whom he has reason to believe to be dangerous by reasons of lunacy. Any person so arrested shall be taken forthwith before the Magistrate.

Case-law :—(a) As to liability of—acting in excess of authority though *bona fide*, see 9 C. 341 (P.C.). (b) Great care to be exercised before coming to the conclusion that a certain person is a lunatic, 5 W.R. Mis. 54.

(2) Every officer in charge of a police-station who has reason to believe that any person within the limits of his station is deemed to be a lunatic and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, shall immediately report the fact to the Magistrate.

14. Whenever any person is brought before a Magistrate under the provisions of sub-section (1) of section 13, the Magistrate shall examine such person, and if he thinks that there are grounds for proceeding further, shall cause him to be examined by a medical officer, and may make such other inquiries as he thinks fit; and if the Magistrate is satisfied that such person is a lunatic and a proper person to be detained, he may, if the medical officer who has examined such person gives a medical certificate with regard to such person, make a reception order for the admission of such lunatic into an asylum:

Reception order in case of wandering and dangerous lunatics.

Provided that, if any friend or relative desires that the lunatic be sent to a licensed asylum and engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic in such asylum, the Magistrate shall, if the person in charge of such asylum consents, make a reception order for the admission of the lunatic into the licensed asylum mentioned in the engagement:

Provided further that if any friend or relative of the lunatic enters into a bond with or without sureties for such sum of money as the Magistrate thinks fit, conditioned that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or to others, the Magistrate, instead of making a reception order, may, if he thinks fit, make him over to the care of such friend or relative.

15. (1) If it appears to the Magistrate, on the report of a police-officer or the information of any other person, that any person within the limits of his jurisdiction deemed to be a lunatic is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, the Magistrate may cause the alleged lunatic to be produced before him, and summon such relative or other person as has or ought to have the charge of him.

Order in case of lunatic cruelly treated or not under proper care and control.

(2) If such relative or other person is legally bound to maintain the alleged lunatic, the Magistrate may make an order for such alleged lunatic being properly cared for and treated, and, if such relative or other person wilfully neglects to comply with the said order, the Magistrate may sentence him to imprisonment for a term which may extend to one month.

(3) If there is no person legally bound to maintain the alleged lunatic, or if the Magistrate thinks fit so to do, he may proceed as prescribed in section 14, and upon being satisfied in manner aforesaid that the person deemed to be a lunatic is a lunatic and a proper person to be detained under care and treatment may, if a medical officer gives a medical certificate with regard to such lunatic, make a reception order for the admission of such lunatic into an asylum.

16. (1) When any person alleged to be a lunatic is brought before a Magistrate under the provisions of section 13 or section 15, the Magistrate may, by an order in writing, authorize the detention of the alleged lunatic in suitable custody for such time not exceeding ten days as may be, in his opinion, necessary to enable the medical officer to determine whether such alleged lunatic is a person in respect of whom a medical certificate may be properly given.

(2) The Magistrate may, from time to time, for the same purpose by order in writing, authorize such further detention of the alleged lunatic for periods not exceeding ten days at a time as he thinks necessary :

Provided that no person shall be detained in accordance with the provisions of this section for a total period exceeding thirty days from the date on which he was first brought before the Magistrate.

17. All acts which the Magistrate is authorized or required to do by sections 14, 15 or 16 may be done in the Presidency-towns or Rangoon by the Commissioner of Police; and all duties which an officer in charge of a police-station is authorized or required to perform, may be performed in any of the Presidency-towns by an officer of the police-force not below the rank of an inspector.

Further provisions as to reception orders and medical certificates.

18. (1) Every medical certificate under this Act shall be made and signed by a medical practitioner or a medical officer, as the case may be, and shall be in the form prescribed.

(2) Every medical certificate shall state the facts upon which the person certifying has formed his opinion that the alleged lunatic is a lunatic, distinguishing facts observed by himself from facts communicated by others; and no reception order on petition shall be made upon a certificate founded only upon facts communicated by others.

(3) Every medical certificate made under this Act shall be evidence of the facts therein appearing and of the judgment therein stated to have been formed by the person certifying on such facts, as if the matters therein appearing had been verified on oath.

19. (1) A reception order required to be founded on a medical certificate shall not be made unless the person who signs the medical certificate, or, where two certificates are required, each person who signs a certificate, has personally examined the alleged lunatic, in the case of an order upon petition, not more than seven clear days before the date of the presentation of the petition, and, in all other cases, not more than seven clear days before the date of the order.

(2) Where two medical certificates are required, a reception order shall not be made unless each person signing a certificate has examined the alleged lunatic separately from the other.

20. A reception order, if the same appears to be in conformity with

Authority for reception.

this Act, shall be sufficient authority for the petitioner or any person authorized by him, or in the case of an order not made upon petition, for the person authorized

so to do by the person making the order, to take the lunatic and convey him to the place mentioned in such order and for his reception and detention therein, or in any asylum to which he may be removed in accordance with the provisions of this Act, and the order may be acted on without further evidence of the signature or of the jurisdiction of the person making the order.

Copy of reception order to be sent to person in charge of asylum.

21. Any authority making a reception order under this Part shall forthwith send a certified copy of the order to the person in charge of the asylum into which such lunatic is to be admitted.

Restriction as to asylums into which reception orders may direct admission.

22. Subject to the provisions of section 35, no Magistrate shall make a reception order for the admission of any lunatic into any asylum established by Government outside the province in which the Magistrate exercises jurisdiction.

Detention of lunatics pending removal to asylum.

23. When any reception order has been made under sections 7, 10,

Detention of lunatics pending removal to asylum.

14 or 15, the Magistrate may, for reasons to be recorded in writing, direct that the lunatic, pending his removal to an asylum, be detained in suitable custody in such place as the Magistrate thinks fit.

Reception and detention of criminal lunatics.

24. An order under section 466 or section 471 of the Code of

V of 1898.
II of 1900.

Reception and detention of criminal lunatics.

Criminal Procedure, 1898, or under section 30 of the Prisoners Act, 1900, directing the reception of a criminal lunatic into any asylum which is prescribed for the reception of criminal lunatics shall be sufficient

authority^(a) for the reception and detention of any person named therein in such asylum or in any other asylum to which he may be lawfully transferred.

Reception after inquisition.

Reception after inquisition.

25. A lunatic so found by inquisition may be admitted into an asylum—

(1) in the case of an inquisition under Chapter IV, on an order made by or under the authority of the High Court:

(2) in the case of an inquisition under Chapter V, on an order made by the District Court.

26. (1) When any lunatic has been admitted into an asylum in

Order for payment of cost of maintenance of lunatic.

accordance with the provisions of section 25, the High Court or the District Court, as the case may be, shall, on the application of the person in charge of the asylum, make an order for the payment of the cost of

Case-law :—(a) Report of case under S. 471, Cr. P.C., for order of Local Government, not necessary, 16 Cr. L. J. 670=30 Ind. Cas. 654.

maintenance of the lunatic in the asylum, and may from time to time direct that any sum of money payable under such order shall be recovered from the estate of the lunatic or of any person legally bound to maintain him :

Provided that if at any time it shall appear to the satisfaction of the Court that the lunatic has not sufficient property, and that no person legally bound to maintain such lunatic has sufficient means for the payment of such cost, the Court shall certify the same instead of making such order for the payment of the cost as aforesaid.

(2) An order under sub-section (1) shall be enforced in the same manner and shall be of the same force and effect and subject to the same appeal as a decree made by the Court in a suit in respect of the property or person therein mentioned.

Amendment of order or certificate.

27. If, after the reception of any lunatic into any asylum on a reception order, it appears that the order upon which he was received or the medical certificate or certificates upon which such order was made is or are defective or incorrect, the same may at any time afterwards be amended by the person or persons signing the same with the sanction of two or more of the visitors of the said asylum, one of whom shall be a medical officer.

Amendment of
order or certificate.

CHAPTER III.

CARE AND TREATMENT.

Visitors.

28. (1) The Local Government shall appoint for every asylum not less than three visitors, one of whom at least shall be a medical officer.

(2) The Inspector-General of Prisons (where such office exists) shall be a visitor *ex-officio* of all the asylums within the limits of his jurisdiction.

29. Two or more of the visitors, one of whom shall be a medical officer, shall, once at least in every month, together inspect every part of the asylum of which they are visitors, and see and examine, as far as circumstances will permit, every lunatic and boarder therein, and the order and certificate for the admission of every lunatic admitted since the last visitation of the visitors, and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the inmates thereof.

Monthly inspection
by visitors

30. (1) When any person is confined under the provisions of section 466 or section 471 of the Code of Criminal Procedure, 1898, the Inspector-General of Prisons, if such person is confined in a jail or the visitors of the asylum or any two of them, if he is confined in an asylum, may visit him in order to ascertain his state of mind ; and he shall be visited once at least in every six months by such Inspector-General or by two of such visitors as aforesaid ; and such Inspector-General or visitors shall make a special report as to the state of mind of such person to the authority under whose order he is confined.

Inspection of criminal lunatics by
Inspector-General or
visitors.

V of 1898.

(2) The Local Government may empower the officer in charge of the jail in which such person may be confined to discharge all or any of the functions of the Inspector-General under sub-section (1).

Discharge of lunatics.

31. (1) Three of the visitors of any asylum, of whom one shall be a medical officer, may, by order in writing, direct the discharge of any person detained in such asylum, and such person shall thereupon be discharged :

Order of discharge from asylum by visitors.

Provided that no order under this sub-section shall be made in the case of a person detained under a reception order under section 12, or, in the case of a criminal lunatic, otherwise than as provided by section 30 of the Prisoners Act, 1900.

III of 1900.

(2) When such order is made, if the person is detained under the order of any public authority, notice of the order of discharge shall be immediately communicated to such authority.

32. (1) A lunatic detained in an asylum under a reception order, made on petition, shall be discharged if the person on whose petition the reception order was made so applies in writing to the person in charge of the asylum :

Discharge of lunatics in other cases and of European military lunatics

Provided that no lunatic shall be discharged under the provisions of sub-section (1) if the officer in charge of the asylum certifies in writing that the lunatic is dangerous and unfit to be at large.

(2) A person detained in an asylum under a reception order made under section 12 shall be detained therein until he is discharged therefrom in accordance with the military regulations in force for the time being, or until the officer making the order applies for his transfer to the military authorities in view to his removal to England.

(3) Whenever it appears to the officer in charge of an asylum that the discharge of a person therein detained under an order made under section 12 is necessary either on account of his recovery, or for any other purpose, such person shall be brought before the visitors of the asylum, and on the visitors recording their opinion that the discharge should be made, the General or other Officer Commanding the division, district, brigade, or force, or other officer authorized to order the admission of such persons into an asylum, shall forthwith direct him to be discharged, and such discharge shall take place in accordance with the military regulations in force for the time being.

33. When any relative or friend of a lunatic detained in any asylum under the provisions of sections 14, 15 or 17 is desirous that such lunatic shall be delivered over to his care and custody, he may make application to the authority under whose order the lunatic is detained, and such authority, if it thinks fit, in consultation with the person in charge of the asylum and with the visitors or with one of them being a medical officer, and upon such relative or friend entering into a bond with or without sureties for such sum of money as the said authority thinks fit conditioned that such lunatic shall be properly taken care of and shall be prevented from doing injury to himself or to others, may make an

Order of discharge on undertaking of relative for due care of the lunatic.

order for the discharge of such lunatic, and such lunatic shall thereupon be discharged.

34. If any lunatic detained in an asylum on a reception order made under section 7, 10, 14, 15 or 17 is subsequently found on an inquisition under Chapter IV or Chapter V not to be of unsound mind and incapable of managing himself and his affairs, the person in charge of the asylum shall forthwith, on the production of a certified copy of such finding, discharge the alleged lunatic from the asylum.

Discharge of person subsequently found on inquisition not to be of unsound mind.

Removal of lunatics.

35. (1) Any lunatic may be removed from any asylum established by Government, to any other asylum within the province in accordance with any general or special order of the Local Government, and to any other asylum in any part of British India in accordance with any general or special order of the Governor General in Council :

Removal of lunatics and criminal lunatics.

Provided that no lunatic admitted into an asylum on a reception order made on petition shall be removed in accordance with the provisions of this sub-section until notice of such intended removal has been given to the petitioner.

(2) The Governor General in Council may make such general or special order as he thinks fit directing the removal of any person for whose confinement an order has been made under section 466 or section 471 of the Code of Criminal Procedure, 1898, from the place where he is for the time being confined, to any asylum, jail or other place of safe custody in British India.

Escape and re-capture.

36. Every person received into an asylum under any such order as is required by this Act, may be detained therein until he is removed or discharged as authorized by law, and in case of escape may, by virtue of such order, be retaken by any police-officer or by the person in charge of such asylum, or any officer or servant belonging thereto, or any other person authorized in that behalf by the said person in charge, and conveyed to and received and detained in such asylum.

Order to justify detention and re-capture after escape.

Provided that in the case of a lunatic not being a criminal lunatic or a lunatic in respect of whom a reception order has been made under section 12, the power to re-take such escaped lunatic under this section shall be exercisable only for a period of one month from the date of his escape.

PART III.

JUDICIAL INQUISITION AS TO LUNACY.

CHAPTER IV.

PROCEEDINGS IN LUNACY IN PRESIDENCY-TOWNS.

Inquisition.

37. The Courts having jurisdiction under this Chapter shall be the High Courts of Judicature Fort William, Madras and Bombay.

Jurisdiction in lunacy in Presidency-towns.

Court may order inquisition as to persons alleged to be insane.

38. (1) The Court may upon application by order direct an inquisition ^(a) whether a person subject to the jurisdiction of the Court who is alleged to be lunatic, is of unsound ^(b) mind and incapable ^(c) of managing himself and his affairs.

(2) Such order may also contain directions for inquiries concerning the nature of the property belonging to the alleged lunatic, the persons who are his relatives, the time during which he has been of unsound mind, or such other matters as to the Court may seem proper.

Application by whom to be made.

39. Application ^(d) for such inquisition may be made by any relative ^(e) of the alleged lunatic ^(f), or by the Advocate-General.

Notice of time and place of inquisition.

40. (1) Notice shall be given to the alleged lunatic of the time and place at which it is proposed to hold the inquisition.

(2) If it appears that personal service on the alleged lunatic would be ineffectual, the Court may direct such substituted service of the notice as it thinks fit.

(3) The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic and upon any other person to whom in the opinion of the Court notice of the application should be given.

Powers of Court in respect of attendance and examination of lunatic.

41. (1) The Court may require the alleged lunatic to attend ^(g) at such convenient time and place as it may appoint for the purpose of being personally examined ^(h) by the Court, or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic.

(2) The Court may likewise make an order authorizing any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

42. The attendance and examination of the alleged lunatic under the provisions of section 41 shall, if the alleged lunatic be a woman who, according to the manners and customs of the country, ought not to be compelled to appear in public, be regulated by the law and practice for the examination of such persons in other civil cases.

Rules respecting attendance and examination of females alleged to be lunatic.

43. (1) If the alleged lunatic is not within the local limits of the jurisdiction of the Court, and the inquisition cannot conveniently be made in the manner hereinbefore provided, the Court may direct the inquisition to be made before the District Court within whose local jurisdiction the alleged lunatic may be; and such

Power to direct District Court to make inquisition in certain cases.

Case-law :—(a) Time of commencement of lunacy is beyond scope of inquiry, 13 M.I.A. 519. (b) As to lunacy with lucid intervals, see 18 M. 472. (c) By reason of unsoundness of mind, A.W.N. (1905) 8; 4 C.L.J. 115. (d) Must be verified, 5 W.R. Mis. 54; 7 W.R. 267. (e) Does not include one who is mere a member of same tribe, 94 P.R. 1906 (f) Proof of insanity, 22 W.R. 38. (g) Case not to be struck off for non-appearance of lunatic, 2 W.R. Mis. 7. (h) Cross-examination of lunatic as witness not contemplated by section, 7 W.R. 426; 8 A.L.J. 179.

District Court shall accordingly proceed to make such inquisition in the same manner as if the alleged lunatic were subject to its jurisdiction, and shall certify its finding upon the matters of inquisition to the Court directing the inquisition.

(2) The record of evidence taken upon the inquisition shall be transmitted, together with any remarks the Court may think fit to make thereon, to the Court by which the inquisition was directed.

Amendment of finding of District Court if defective or insufficient in form.

44. If the finding of the District Court appears to the Court directing the inquisition to be defective or insufficient in point of form, it may either amend the same or refer it back to the Court which made the inquisition to be amended.

45. The finding of the Court on the inquisition or the finding of the District Court to which the inquisition may have been referred under the provisions of section 43 with such amendments as may be made under the provisions of section 44, as the case may be, shall have the same effect, and be proceeded on in the same manner in regard to the appointment of a guardian of the person and a manager of the estate of the lunatic as the findings referred to in section 12 of the Lunacy (Supreme Courts) Act, 1858, immediately before the commencement of this Act. XXXIV of 1858.

Judicial powers over person and estate of lunatic.

Custody of lunatics and management of their estates.

46. (1) The Court may make orders (a) for the custody of lunatics so found by inquisition and the management (b) of their estates.

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provision for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

47. The Court, on the appointment of a manager of the estate (c) of a lunatic, may direct by the order of appointment, or by any subsequent order, that such manager shall have such powers for the management of the estate as to the Court may seem necessary and proper, reference being had to the nature of the property, whether moveable or immoveable, of which the estate may consist :

Provided that no manager (d) so appointed shall without the permission of the Court—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise, any immoveable property of the lunatic ; or

Case-law :—(a) See 30 C. 973. (b) Manager in respect of undivided share of member of Hindu joint family, cannot be appointed, 23 M.L.J. 706=12 M.L.T. 585. (c) Manager cannot be appointed before the man has been adjudged to be lunatic, 15 W. R. 259 ; 20 W.R. 477 ; as to—vested in lunatic as head of a mutt, see 21 M. 403. (d) Includes natural guardian appointed as manager, 14 M.L.T. 489.

- (b) lease (a) any such property for a term exceeding five years. Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose.

Power to make order concerning any matter connected with the lunacy.

48. The Court may, on application made to it by petition concerning any matter whatsoever connected with the lunatic or his estate, make such order, subject to the provisions of this Chapter, respecting the application, as in the circumstances it thinks fit.

Management and administration.

49. The Court may, if it appears to be just or for the lunatic's benefit, order that any property, moveable or immovable, of the lunatic, and whether in possession, reversion, remainder, or contingency, be sold, charged, mortgaged, dealt with or otherwise disposed of as may seem most expedient for the purpose of raising or securing or repaying with or without interest money to be applied or which has been applied to all or any of the following purposes, namely—

- (1) the payment of the lunatic's debts or engagements ;
- (2) the discharge of any incumbrance on his property ;
- (3) the payment of any debt or expenditure incurred for the lunatic's maintenance or otherwise for his benefit ;
- (4) the payment of or provision for the expenses of his future maintenance and the maintenance of such members of his family as are dependent on him for maintenance, including the expenses of his removal to Europe, if he shall be so removed, and all expenses incidental thereto ;
- (5) the payment of the costs of any inquiry under this Chapter, and of any costs incurred by order or under the authority of the Court.

Execution of conveyances and powers by manager under order of Court.

50. (1) The manager of the lunatic's estate shall, in the name and on behalf of the lunatic, execute all such conveyances and instruments of transfer relative to any sale, mortgage or other disposition of his estate as the Court may order.

(2) Such manager shall, in like manner, under the order of the Court, exercise all powers whatsoever vested in a lunatic, whether the same are vested in him for his own benefit or in the character of trustee or guardian

51. Where a person, having contracted to sell or otherwise dispose of his estate or any part thereof, afterwards becomes lunatic, the Court may, if the contract is such as the Court thinks ought to be performed, direct the manager of the estate to execute such conveyances and to do such other acts in fulfilment of the contract as it shall think proper.

Case-law :—(a) Permission not necessary for ordinary cultivating lease for uncertain time, 6 Ind. Cas. 158.

Dissolution and disposal of property of partnership on a member becoming lunatic.

52. (1) Where a person, being a member of a partnership firm, is found to be a lunatic, the Court may, on the application of the other partners, or of any person who appears to the Court to be entitled to require the same, dissolve the partnership.

(2) Upon such dissolution, or upon a dissolution by decree of Court or otherwise by due course of law, the manager of the estate may, in the name and on behalf of the lunatic, join with the other partners in disposing of the partnership property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership, as the Court shall think proper.

53. Where a lunatic has been engaged in business, the Court may, if it appears to be for the lunatic's benefit that the business premises should be disposed of, order the manager of the estate to sell and dispose of the same, and the moneys arising from such sale shall be applied in such manner as the Court may direct.

54. Where a lunatic is entitled to a lease or under-lease, and it appears to be for the benefit of his estate that it should be disposed of, the manager of the estate may, by order of the Court, surrender, assign or otherwise dispose of the same to such person for such valuable or nominal consideration, and upon such terms, as the Court thinks fit.

55. If a lunatic is possessed of any immoveable property situate beyond the local limits of the jurisdiction of the Court which, by the law in force in the Province wherein such property is situated, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards ^(a), the said Court of Wards may assume the charge of such property and manage the same according to the law for the time being in force for such management :

Assumption of charge by Court of Wards of land belonging to a lunatic in certain cases.

Provided that—

- (1) in such case, no further proceedings in respect of the lunacy shall be taken under any such law, nor shall it be competent to the Court of Wards or to any Collector to appoint a guardian of the person of the said lunatic or a manager of the estate except of the immoveable property which so subjects the proprietor as aforesaid :
- (2) the surplus of the income of such property, after providing for the payment of the Government revenue and expenses of management, shall be disposed of from time to time in such manner as the High Court may direct :
- (3) nothing contained in this section shall affect the powers given to the High Court by sections 49, 50 and 51 or (except so far as relates to the management of the said immoveable property which so subjects the proprietor as aforesaid) the powers given by any other section.

Case-law :—(a) Appointment of manager valid till assumption of charge by Court of Wards, 15 Ind. Cas. 265 ; see 6 S.L.R. 25.

56. (1) If it appears to the Court, having regard to the situation and condition in life of the lunatic and his family and the other circumstances of the case, to be expedient that his property should be made available for his or their maintenance in a direct and in expensive manner it may, instead of appointing a manager of the estate, order that the property if money or if of any other description the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the purpose aforesaid.

(2) The receipt of the person so appointed shall be a valid discharge to any person who pays any money or delivers any property of the lunatic to such person.

Vesting orders.

57. (a) Where any stock or Government securities or any share in a company (transferable within British India or the dividends of which are payable there) is or are standing in the name of, or vested in, a lunatic, beneficially entitled thereto, or in a manager of the estate of a lunatic, or in a trustee for him, and the manager dies intestate, or himself becomes lunatic, or is out of the jurisdiction of the Court, or it is uncertain whether the manager is living or dead, or he neglects or refuses to transfer the stock, securities or shares, or to receive and pay over thereof the dividends to a new manager or as the Court directs, within fourteen days after being required by the Court to do so, then the Court may order some fit person to make such transfer, or to transfer the same, and to receive and pay over the dividends in such manner as the Court directs.

58. Where any such stock or Government securities or share in a company is or are standing in the name of, or vested in, any person residing out of British India and not in any part of the United Kingdom, the Court upon being satisfied that such person has been declared lunatic, and that his personal estate has been vested in a person appointed for the management thereof, according to the law of the place where he is residing, may order some fit person to make such transfer of the stock, securities or shares, or of any part thereof, to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends and proceeds as the Court thinks fit.

General.

59. If it appears to the Court that the unsoundness of mind of a lunatic is in its nature temporary, and that it is expedient to make temporary provision for his maintenance or for the maintenance of such members of his family as are dependent on him for their maintenance, the Court may, in like manner as under section 56, direct his property or a sufficient part of it to be applied for the purpose aforesaid.

60. (1) When any person has been found (a) under this Chapter to be of unsound mind, and it is subsequently shown to the Court that there is reason to believe that such unsoundness of mind has ceased, the Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs.

Proceedings in lunacy to cease or to be set aside if Court finds that the unsoundness of mind has ceased.

(2) The inquiry shall be conducted as far as may be in the manner prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic; and if it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit.

Power of Court to make rules.

61. The Court may, from time to time, make rules for the purpose of carrying into effect the provisions of this Chapter in matters of lunacy.

CHAPTER V.

PROCEEDINGS IN LUNACY OUTSIDE PRESIDENCY-TOWNS.

Inquisition.

62. Whenever any person not subject to the jurisdiction of any of the Courts mentioned in section 37 is possessed of property and is alleged to be a lunatic, the District Court within whose jurisdiction such person is residing may, upon application, by order direct an inquisition^(b) for the purpose of ascertaining whether such person is of unsound mind and incapable of managing himself and his affairs.

Power of District Court to institute inquisition as to persons alleged to be lunatic.

63. (1) Application for such inquisition may be made by any relative of the alleged lunatic or by any public Curator appointed under the Succession (Property Protection) Act, 1841 (hereinafter referred to as the Curator), or by the Government Pleader, as defined in the Code of Civil Procedure, 1908, or if the property of the alleged lunatic consists in whole or in part of land or any interest in land, by the Collector of the district in which it is situate.

Application by whom to be made.

XIX of 1841.
V of 1906

(2) If the property or any part thereof is of such a description that it would by the law in force in any Province where such property is situate subject to the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the application may be made by the Collector on behalf of the Court of Wards.

Regulation of proceedings of District Courts.

64. The provisions of sections 40, 41 and 42 shall regulate the proceedings of the District Court with regard to the matters to which they relate.

Inquisition by District Court and finding thereon.

65. (1) The District Court, if it thinks fit, may appoint two or more persons to act as assessors to the Court in the said inquisition.

Case-law :—(a) I.e., upon satisfactory evidence, 2 A.L.J. 154; 31 C. 210. (b) Before taking action Court should be satisfied that lunatic has property, 29 M. 310.

(2) Upon the completion of the inquisition, the Court shall determine whether the alleged lunatic is of unsound mind and incapable of managing himself and his affairs or may come to a special finding that such alleged lunatic is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others.

66. (1) If the alleged lunatic resides at a distance of more than fifty miles from the place where the District Court is held to which the application is made, the said Court may issue a commission to any subordinate Court to make the inquisition, and such subordinate Court shall thereupon conduct the inquisition in the manner herein before provided in this Chapter.

Inquisition by subordinate Court on commission issued by District Court and proceedings thereon.

(2) On the completion of the inquisition, the subordinate Court shall transmit the record of its proceedings with the opinions of the assessors, if assessors have been appointed, and its own opinion on the case; and the District Court shall thereupon proceed to dispose of the application in the manner provided in section 65, sub-section (2):

Provided that the District Court may direct the subordinate Court to make such further or other inquiries as it thinks fit before disposing of the application.

Judicial powers over person and estate of lunatic.

67. (1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates (a).

Custody of lunatics and management of their estates.

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provisions for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

68. If the estate of a lunatic so found or any part thereof consists of property which, by the law for the time being in force, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the Court of Wards shall be authorized to take charge of the same.

Court of Wards to be authorised in certain cases to take charge of estate of lunatic.

69. (1) If the estate of a lunatic so found consists in whole or in part of land or any interest in land, but is not of such a nature that it would subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the District Court may direct the Collector to take charge of the person and estate of the lunatic:

Power to direct Collector to take charge of person and estate of lunatic in certain cases.

CASE-LAW :—(a) See notes under 8, 46, *supra*.

Provided that no such order shall be made without the consent of the Collector previously obtained.

(2) The Collector shall thereupon appoint a manager of the estate, and may appoint a guardian of the person of the lunatic.

70. All proceedings of the Collector in regard to the person or estate of a lunatic under this Chapter shall be subject to the control of the Local Government or of such authority as it may appoint in this behalf.

Control over proceedings of Collector.

Power of District Court to appoint guardian and manager and take security from manager.

71. (1) In all other cases the District Court shall appoint a manager ^(a) of the estate of the lunatic and may appoint a guardian of his person :

Provided that a District Court may, instead of appointing a manager of the estate of a lunatic, exercise any of the powers conferred on the High Court under sections 56 and 59.

(2) Any person who has been appointed by the District Court or Collector to manage the estate of a lunatic shall, if so required, enter into a bond in such form and with such sureties as to the Court or the Collector, as the case may be, may seem fit, engaging duly to account for what he may receive in respect of the property of the lunatic.

Restriction on appointment of legal heir of lunatic to be guardian of his person.

72. The legal heir ^(b) of a lunatic shall not be appointed to be the guardian of the person of such lunatic unless the Court or the Collector, as the case may be, for reasons to be recorded in writing, considers that such an appointment is for the benefit of the lunatic.

73. A guardian of the person of the lunatic or a manager of his estate appointed under this Chapter shall be paid such allowance, if any, as the Court or the Collector, as the case may be, thinks fit for his care and pains in the execution of his duties.

Remuneration of managers and guardians.

Duties of guardian.

74. (1) The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance.

(2) When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as may be fixed by the District Court or the Collector, as the case may be, for the maintenance of the lunatic and such members of his family ^(c) as are dependent on him for their maintenance.

75. (1) Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic, and may collect and pay all just claims, debts and liabilities due to or by the estate of the lunatic :

Powers of manager.

Case law :—(a) For appointment of—, it is enough if lunatic has some beneficial interest in property, 33 Ind. Cas. 106; as to his position towards Court appointing him, see 24 O. 133; as to appointment of guardian *ad litem* for a lunatic defendant, see 6 M. 880; 20 A. 2; 16 B. 132. (b) As to appointment of lunatic's wife as guardian, see 15 A. 29; 39 A. 158. (c) Does not include lunatic's married daughter living with her husband separately from her father, 23 C. 512.

Provided that no manager so appointed shall without the permission of the Court—

- (a) mortgage, charge, or transfer by sale, gift, exchange or otherwise any immoveable property of the lunatic,
- (b) lease any such property for a term exceeding five years.

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose.

(2) Before granting any such permission, the Court may cause notice of the application for such permission to be served on any relative or friend of the lunatic, and may make or cause to be made such inquiries as to the Court may seem necessary in the interests of the lunatic.

76. (1) Every person appointed by the District Court or by the Collector to be manager of the estate of a lunatic shall, within six months from the date of his appointment, deliver in Court or to the Collector, as the case may be, an inventory of the immoveable property belonging to the lunatic and of all such money, or other moveable property, as he may receive on account of the estate, together with a statement of all debts due by or to the same.

(2) Every such manager shall also furnish to the Court or to the Collector annually, within three months of the close of the year of the era current in the district, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands.

77. If any relative of the lunatic, or the Collector by petition to the Court, impugns the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager and inquire summarily into the matter and make such order thereon as it thinks fit; or the Court, at its discretion, may refer any such petition to any subordinate Court or to the Collector if the manager was appointed by the Collector.

78. All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate, shall be paid into the public treasury on account of the estate, and shall be invested from time to time in any of the securities specified in section 20 of the Indian Trust Act, 1882, unless the Court or the Collector, as the case may be, for reasons to be recorded in writing, directs that such sums be in the interest of the lunatic otherwise invested or applied.

79. Any relative of a lunatic may with the leave of the District Court sue for an account from any manager appointed under this Chapter, or from any such person after his removal from office or trust, or from his legal representative in case of his death, in respect of any estate then or formerly under his care or management or of any sums of money or other property received by him on account of such estate.

80. (1) The District Court, for any sufficient cause, may remove any manager appointed by it not being the Curator, and may appoint such Curator or any other fit person in his place, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all money received or disbursed by him.

(2) The Court may also, for any sufficient cause, remove any guardian of the person of the lunatic appointed by it, and may appoint any other fit person in his place.

(3) The Collector, for any sufficient cause, may remove any manager of the estate of a lunatic or guardian of the person of a lunatic appointed by him, and may appoint any other fit person in place of such manager or guardian; and the District Court, on the application of the Collector, may compel any manager removed under this section to make over the property and all accounts in his hands to his successor and to account to such successor for all money received or disbursed by him.

81. The District Court may impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the time fixed by the Court, and may realize such fine as if it were a sum due under a decree of the Court, and may also commit the recusant to the civil jail until he delivers such accounts or property.

Proceedings in lunacy to cease or to be set aside if Court finds that the unsoundness of mind has ceased.

82. (1) When any person has been found under this Chapter to be of unsound mind, and it is subsequently shown to the District Court^(a) that there is reason to believe that such unsoundness of mind has ceased, such Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs.

(2) The inquiry^(b) shall, as far as may be, be conducted in the same manner as is prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic, and if it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit.

Appeals.

83. An appeal shall lie to the High Court from any order made by a District Court, under this Chapter.

PART IV. MISCELLANEOUS. CHAPTER VI.

ESTABLISHMENT OF ASYLUMS.

Local Government may establish or license the establishment of asylums.

84. The Local Government may establish or license the establishment of asylums at such places as it thinks fit.

Case-law :—(a) Position of—in proceeding under Act is partly judicial and partly administrative, 19 O.C. 353. (b) Object and nature of—, *ibid.*

Provision for admission of lunatics in asylums outside a province.

85. The Governor General in Council may, by any general or special order, direct that Magistrates or Courts exercising jurisdiction in any province may send lunatics or any class of lunatics to any asylum situate in any other province.

CHAPTER VII.

EXPENSES OF LUNATICS.

86. (1) When any lunatic is admitted to a licensed asylum under a reception order or an order under section 25, and no engagement has been taken from the friends or relatives of the lunatic or order made by the Court for the payment of expenses under the provisions of this Act, the cost of maintenance of such lunatic shall, subject to the provision of any law for the time being in force, be paid by the Government to the person in charge of such asylum.

Payment of cost of maintenance in licensed asylums in certain cases by Government.

(2) The paymaster of the military circle within which any asylum is situated shall pay to the officer in charge of such asylum the cost of maintenance of every lunatic received and detained therein under an order made under section 12.

87. Any money in the possession of a lunatic found wandering at large may be applied by the Magistrate towards the payment of the cost of maintenance of the lunatic or of any other expenses incurred on his behalf, and any moveable property found on the person of the lunatic may be sold by the Magistrate, and the proceeds thereof similarly applied.

Application of property in the possession of a lunatic found wandering.

88. If a lunatic detained in an asylum on a reception order made under section 14, section 15 or section 17 has an estate applicable to his maintenance, or if any person legally bound to maintain such lunatic has the means to maintain him, the authority which made the reception order or any local authority liable for the cost of maintenance of such lunatic under any law for the time being in force may apply to the High Court or District Court within the local limits of the original jurisdiction of which the estate of the lunatic is situate or the person legally bound to maintain him resides, for an order for the payment of the cost of maintenance of the lunatic.

Application to Civil Court for order for the payment of cost of maintenance out of the lunatic's estate, or by person bound to maintain him.

89. (1) The Court shall inquire into the matter in a summary way, and on being satisfied that such lunatic has an estate applicable to his maintenance, or that any person is legally bound to maintain and has the means of maintaining such lunatic, may make an order for the recovery of the cost of maintenance of such lunatic, together with the costs of the application out of such estate or from such person.

Order of Court and enforcement thereof.

(2) Such order shall be enforced in the same manner, and shall be of the same force and effect and subject to the same appeal as a decree made by the said Court in a suit in respect of the property or person therein mentioned.

Saving of liability
of relatives to main-
tain lunatic.

90. The liability of any relative or person to maintain any lunatic shall not be taken away or affected by any provision contained in this Act.

CHAPTER VIII.

RULES.

Power of Local
Government to
make rules.

91. (1) Subject to the control of the Governor General in Council, the Local Government may make rules for all or any of the following purposes, namely :—

- (a) to prescribe forms for any proceeding under this Act other than a proceeding before a High Court which is or may hereafter be established under the Indian High Courts Acts, 1861 to 1911 ; 24 & 25 Vict. c. 104, to 1 & 2 Geo., 5, c. 18.
- (b) to prescribe places of detention and regulate the care and treatment of persons detained under section 8 or section 16 ;
- (c) to regulate the confinement, care, treatment and discharge of criminal lunatics ;
- (d) to regulate the management of asylums and the care and custody of the inmates thereof and their transfer from one asylum to another ;
- (e) to regulate the transfer of criminal lunatics to asylums ;
- (f) to prescribe the procedure to be followed by District Courts and Magistrates before a lunatic is sent to any asylum established by Government ;
- (g) to prescribe the asylums established by Government within the province to which lunatics from any area or any class of lunatics shall be sent ;
- (h) to prescribe conditions subject to which asylums may be licensed ;
- (i) save as otherwise provided in this Act, generally to carry into effect the provisions of the Act.

(2) In making any rule under this section, the Local Governments may direct that a breach of it shall be punishable with fine which may extend to fifty rupees.

Publication of
rules.

92. All rules made under section 91 shall be published in the local official Gazette, and shall thereupon have effect as if enacted in this Act.

CHAPTER IX.

SUPPLEMENTAL PROVISIONS.

Penalty for im-
proper reception or
detention of lunatic.

93. Any person who—

- (a) otherwise than in accordance with the provisions of this Act receives or detains a lunatic or alleged lunatic in an asylum, or
- (b) for gain detains two or more lunatics in any place not being an asylum,

shall be punishable with imprisonment which may extend to two years or with fine or with both.

1893. Provision as to bonds. **94.** The provisions of Chapter XLII of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to bonds taken under this Act.

95. (1) When any sum is payable in respect of pay, pension, gratuity, or other similar allowance to any person by Government and the person to whom the sum is payable is certified by a Magistrate to be a lunatic, the Government officer under whose authority such sum would be payable if the payee were not a lunatic may pay so much of the said sum as he thinks fit to the person having charge of the lunatic, and may pay the surplus, if any, or such part thereof, as he thinks fit for the maintenance of such members of the lunatic's family as are dependent on him for maintenance.

(2) The Secretary of State for India in Council shall be discharged of all liability in respect of any amounts paid in accordance with this section.

96. Subject to any rules, the forms set forth in the First Schedule, with such variation as the circumstances of each case may require, shall be used for the respective purposes therein mentioned, and if used shall be sufficient.

97. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

98. Any officer in charge of an asylum may give effect to any order or warrant for the reception and detention of any lunatic made or issued by any Court or tribunal beyond the limits of British India in the exercise of jurisdiction conferred by His Majesty or the Governor General in Council.

99. The Governor General in Council may make rules regulating the procedure for the reception and detention in asylums in British India of lunatics whose reception and detention are provided for by section 98.

100. (1) In the case of orders made before the commencement of this Act under section 7 of the Indian Lunatic Asylums Act, 1858, for the reception of persons into an asylum, the persons who signed the order shall have all the powers and be subject to the obligations by this Act conferred or imposed upon the petitioner for a reception order, and the provisions of this Act relating to persons upon whose petition a reception order was made shall apply in the case of a person who has signed an order, under section 7 of the Indian Lunatic Asylums Act, 1858, before the commencement of this Act as if the order had been made after the commencement of this Act upon a petition presented by him.

(2) All orders for the detention of lunatics made and all undertakings given under any enactment hereby repealed shall have the same force and

XXXVI of
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XXXVI of
1858.

effect as if they had been made or given under this Act and by or to the authority empowered thereby in such behalf.

101. [1] * * *

SCHEDULE I.

FORMS.

(See section 96.)

FORM 1.

Application for Reception Order.

(See sections 5 and 6.)

In the matter of A.B., residing at _____, by occupation _____, son of _____; a person alleged to be a lunatic.
To _____ Presidency Magistrate, for [or
District Magistrate of _____, or Sub-divisional Magistrate of
or Magistrate specially empowered under Act IV of 1912
for _____].

The petition of C.D., residing at _____, by occupation _____, son of _____, in the town of _____ [or sub-division
of _____ in the district of _____].

1. I am _____ years of age.

2. I desire to obtain an order for the reception of A.B. as a lunatic in the _____ asylum of _____ situate at _____.

3. I last saw the said A.B. at _____ on the _____ day of _____.

4. I am the _____ of the said A.B.

[or if the petitioner is not a relative of the patient state as follows.]

I am not a relative of the said A.B. The reasons why this petition is not presented by a relative are as follows: [State them.]

The circumstances under which this petition is presented by me are as follows: [State them.]

5. The persons signing the medical certificates which accompany the petition are _____

6. A statement of particulars relating to the said A. B. accompanies this petition.

7. [If that is the fact.] An application for an inquiry into the mental capacity of the said A. B. was made to the _____ on the _____ and a certified copy of the order made on the said petition is annexed hereto. [Or if that is the fact.]

No application for an inquiry into the mental capacity of the said A. B. has been made previous to this application.

The petitioner therefore prays that a reception order may be made in accordance with the foregoing statement.

(Sd.) C.D.

The statements contained or referred to in paragraphs _____ are true to my knowledge; the other statements are true to my information and belief.

(Sd.) C.D.

Dated _____

Leg. Changes:—[1] Repealed by Act XVII of 1914.

Statement of particulars.

[If any of the particulars in this statement is not known, the fact to be so stated.]

The following is a statement of particulars relating to the said A.B.

Name of patient at length.

Sex and age.

Married, single or widowed.

Previous occupation.

Caste and religious belief, as far as known.

Residence at or immediately previous to the date hereof.

Names of any near relatives to the patient who are alive.

Whether this is first attack of lunacy.

Age (if known) on first attack.

When and where previously under care and treatment as a lunatic.

Duration of existing attack.

Supposed cause.

Whether the patient is subject to epilepsy.

Whether suicidal.

Whether the patient is known to be suffering from phthisis or any form of tubercular disease.

Whether dangerous to others, and in what way.

Whether any near relative (stating the relationship) has been afflicted with insanity.

Whether the patient is addicted to alcohol, or the use of opium, ganja, charas, bhang, cocaine or other intoxicant.

[The statements contained or referred to in paras. are true to my knowledge. The other statements are true to my information and belief.]

[Signature by person
making the statement.]

FORM 2.

Reception Order on Petition.

(See sections 7, 10.)

I, the undersigned E.F., being a Presidency Magistrate of [or the District Magistrate of or the Sub divisional Magistrate of or a Magistrate of the first class specially empowered by Government to perform the functions of a Magistrate under Act IV of 1912] upon the petition of C.D. of in the matter of A.B., a lunatic, accompanied by the medical certificates of G H., a medical officer, and of J K., a medical practitioner [or medical officer], under the said Act, hereto annexed, hereby authorise you to receive the said A.B. into your asylum. And I declare that I have [or have not] personally seen the said A. B. before making this order.

(Sd.) E. F.

(Designation as above.)

To

FORM 3.

*Medical Certificate.**(See sections 18, 19.)*

In the matter of A. B. of in the town of [or the sub-
division of in the district of] an alleged lunatic.

I, the undersigned C.D., do hereby certify as follows :

1. I am a gazetted medical officer [or a medical practitioner declared by Govern-
a holder of [or declared by Local Government to be a medical practi-
ment to be medical officer under Act IV of 1912] and I am in the actual practice
tioner under Act IV of 1912] of the medical profession.

2. On the day of 19 at in the ^{town}_{village} of [or the sub-
division of in the district of] [separately from any other
practitioner], I personally examined the said A. B. and came to the con-
clusion that the said A. B. is a lunatic and a proper person to be taken
charge of and detained under care and treatment.

3. I formed this conclusion on the following grounds, viz.:—

(a) Facts indicating insanity observed by myself, viz.:—

(b) Other facts (if any) indicating insanity communicated to me by
others, viz.:—*Here state the information and from whom.*

(Sd.) C. D.

(Designation as above.)

FORM 4.

*Reception Order in case of Lunatic Soldier.**(See section 12.)*

Whereas it appears to me that A.B., a European, subject to the
Army Act, who has been declared a lunatic in accordance with the pro-
visions of the military regulations, should be removed to an asylum, I
do hereby authorise you to receive the said A. B. into your asylum.

(Sd.) E. F.

To

(Administrative Medical Officer.)

FORM 5.

*Reception Order in case of wandering or dangerous lunatics or lunatics
not under proper control or cruelly treated (sent to an asylum establish-
ed by Government).*

(See sections 14, 15, 17.)

I, C.D., Presidency Magistrate of [or Commissioner of
Police for] [or the District Magistrate of or the Sub-
divisional Magistrate of or a Magistrate specially empowered by
Government under Act IV of 1912] having caused A. B. to be examined
by E. F., a Medical Officer under the Indian Lunacy Act, 1912, and being
satisfied that A. B. [describing him] is a lunatic who was wandering at
large [or is a person dangerous by reason of lunacy] [or is a lunatic not

under proper care and control or is cruelly treated or neglected by the person having the care or charge of him] and a proper person to be taken charge of and detained under care and treatment, hereby direct you to receive the said A.B. into your asylum.

(Sd.) C. D.

(Designation as above.)

Dated the

To the officer in charge of the asylum at

FORM 6.

Same when sent to a licensed asylum.

I, C. D., [as above down to "care and treatment"] and being satisfied with the engagement entered into in writing by G.H. of [here insert address and description] who has desired that the said A.B. may be sent to the asylum at [here insert description of asylum and name of the person in charge] to pay the cost of maintenance of the said A.B., in the said asylum, hereby authorize you to receive the said A.B. into your asylum.

(Sd.) C. D.

(Designation as above.)

Dated the

To the person in charge of the asylum at

FORM 7.

Bond on the making over of a lunatic to the care of relative or friend.

(See sections 14, 15, 17.)

Whereas A. B., son of , inhabitant of , has been brought up before C. D., a Presidency Magistrate for the town of [or Commissioner of Police for] [or the District Sub-divisional Magistrate of , or a Magistrate of the first class specially empowered under Act IV of 1912] and is a lunatic who is believed to be dangerous [or deemed to be a lunatic who is not under proper care and control or is cruelly treated or neglected by the person having the charge of him] and whereas I, E.F., son of , inhabitant of , have applied to the Magistrate [or Commissioner of Police] that the said A.B. may be delivered to my care :

I, E.F., abovenamed hereby bind myself that on the said A.B. being made over to my care, I will have the said A. B. properly taken care of and prevented from doing injury to himself or to others : and in case of my making default therein, I hereby bind myself to forfeit to His Majesty the King-Emperor of India, the sum of rupees

Dated this day of 19 .

(Sd.) E. F.

(Where a bond with sureties is to be executed add)—We do hereby declare ourselves sureties for the abovenamed E. F. that he will, on the aforesaid A. B. being made over to his care, have the said A. B. properly taken care of and prevented from doing injury to himself or to others ;

and in case of the said E. F. making default therein, we bind ourselves, jointly and severally, to forfeit to His Majesty the King-Emperor of India, the sum of rupees .

Dated this day of 19 .

(Signature.)

FORM 8.

Bond on the discharge of a lunatic from an asylum on the undertaking of relative or friend to take due care.

(See section 33.)

Whereas A. B., son of , inhabitant of , is a lunatic who is now detained in the asylum at under an order made by C. D., a Presidency Magistrate for the town of [or Commissioner of Police for] [or the ^{District} Sub-divisional Magistrate of , or a Magistrate of the first class specially empowered under Act IV of 1912] under section 14 [or section 15] of Act IV of 1912, and whereas I, E. F., son of , inhabitant of , have applied to the said Magistrate [or Commissioner of Police] that the said A. B. may be delivered to my care and custody :

I hereby bind myself that on the said A. B. being made over to my care and custody, I will have him properly taken care of and prevented from doing injury to himself or to others ; and in case of my making default therein, I hereby bind myself to forfeit to His Majesty the King-Emperor of India, the sum of rupees .

Dated this day of 19 .

(Sd.) E. F.

(Where a bond with sureties is to be executed add)—We do hereby declare ourselves sureties for the abovenamed E. F. that he will, on the aforesaid A. B. being delivered to his care and custody, have the said A. B. properly taken care of and prevented from doing injury to himself or to others ; and in case of the said E. F. making default therein, we bind ourselves, jointly and severally, to forfeit to His Majesty the King-Emperor of India, the sum of rupees .

Dated this day of 19 .

(Signature.)

SCHEDULE II.

[1]

*

*

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THE MADRAS COAST-LIGHTS ACT, 1904.

(ACT IX OF 1904.)

[Passed on the 25th March, 1904.]

An Act to authorize the levy of dues on vessels for the provision of lights on the coast of the Presidency of Madras.

WHEREAS it is expedient to authorize the levy of dues on vessels for the provision of lights on the coast of the Presidency of Madras; It is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may be called the Madras Coast-lights Act, 1904.

(2) It extends to the whole of British India.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

VIII of 1878.

(a) "Customs-collector" means a Customs-collector appointed under the Sea Customs Act, 1878, and includes any person appointed by the Local Government to discharge the functions of a Customs-collector under this Act; and

(b) "ton" means a ton as determined or determinable by the rules for the time being in force for regulating the measurement of the net tonnage of British ships.

Imposition of coast-light dues. 3. (1) For the purpose of providing lights on the coast of the Presidency of Madras, coast-light dues shall be paid in respect of every vessel of the burden of thirty tons or upwards making any such voyage as is described in the schedule.

(2) The said dues shall be paid at such rates, not exceeding those respectively specified in the schedule, as the Governor of Fort St. George in Council may, with the previous sanction of the Governor General in Council, fix by notification in the local official Gazette.

(3) The said coast-light dues shall be payable only at ports in British India other than Aden and shall be paid—

(a) in the case of a vessel clearing out of a port in British India, previous to the grant of a port-clearance; and

(b) in the case of a vessel arriving from Aden or a port outside British India at a port in British India other than Aden, immediately upon her arrival in such port:

Provided that, when coast-light dues have been paid in the case of any vessel on account of the lights in the eastern or western group, no further coast-light dues on account of lights in the same group shall be payable in respect of that vessel for a period of thirty days from the date on which such dues were paid.

S. 6 ACT IX OF 1904 (MADRAS COAST-LIGHTS). Mad. Coast-lights

Explanation.—The coast-lights on the east coast of the Presidency of Madras shall be deemed to constitute the eastern group of coast-lights, and the coast-lights on the west coast of the said Presidency to constitute the western group of coast-lights.

Collection of coast-light dues and grant of receipt therefor. 4. The Customs-collector shall levy the coast-light dues payable under section 3, and shall grant to the person paying the same a receipt in writing under his hand specifying—

- (a) the port at which the coast-light dues are paid ;
- (b) the amount paid ;
- (c) the name, tonnage and other proper description of the vessel in respect of which the payment is made ; and
- (d) the group in respect of which the coast-light dues are paid.

Master to report arrival of vessel. 5. Within twenty-four hours after the arrival in any port of a vessel in respect of which coast-light dues are payable under section 3, the master shall give notice in writing of such arrival to the Customs-collector.

Ascertainment of tonnage. 6. In order to ascertain the tonnage of any vessel in respect of which coast-light dues are payable under section 3, the following rules shall be observed, namely :—

- (a) Where the vessel is registered under any law for the time being in force in British India, the Customs-collector may require the owner or master, or any other person having possession of her register, to produce such register for inspection ; and, if any such owner, master or other person neglects or refuses to produce such register or otherwise to satisfy the Customs-collector as to what is the true tonnage of the vessel in respect of which such coast-light dues are payable, he shall be punishable with fine which may extend to one hundred rupees, and the Customs-collector may cause the vessel to be measured and the tonnage thereof to be ascertained ; and in such case the owner or master shall also be liable to pay the expenses of such measurement and ascertainment.
- (b) Where the vessel is not so registered, and the owner or master fails to satisfy the Customs-collector as to what is her true tonnage according to the mode of measurement prescribed by the law for regulating the measurement of British registered vessels for the time being in force, the Customs-collector shall cause the vessel to be measured, and the tonnage thereof to be ascertained according to such mode as aforesaid ; and in such case the owner or master shall be liable to pay the expenses of such measurement and ascertainment.

Mad. Coast-lights ACT IX OF 1904 (MADRAS COAST-LIGHTS). S. 7

7. Where the master of any vessel refuses or neglects to pay to the Customs-collector on demand the amount of any coast-light dues or expenses payable under this Act in respect of such vessel, the Customs-collector may seize the vessel and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount of such dues or expenses is paid ;

Recovery of coast-light dues, expenses and costs.

and in case any part of such dues or expenses, or of the costs of such seizure and detention, remains unpaid for the space of five days next after any seizure so made, the Customs-collector may cause the vessel or other thing so seized to be sold, and with the proceeds of the sale may satisfy the dues, expenses and costs (including the costs of sale) remaining unpaid, and shall, on demand, render the surplus (if any) to the master of the vessel.

8. The officer whose duty it is to grant a port-clearance for any vessel shall not grant such port-clearance until her master or some other person has paid, or secured to the satisfaction of the officer, the amount of all coast-light dues, expenses and costs payable in respect of the vessel under this Act, and of any fine imposed thereunder.

No port-clearance to be granted until coast-light dues, expenses and costs are paid.

9. The master of any vessel departing from or arriving in any port in British India, other than Aden, shall, on the demand of the Customs-collector, specify to what port the vessel is bound and at what port or ports (if any) the vessel intends to call, or from what port or ports she has come.

Master to specify on demand ports to or from which vessel is bound.

10. Whoever, being the master of a vessel, evades, or attempts to evade, the payment of any coast-light dues, expenses or costs payable in respect of such vessel under this Act, shall be punishable with fine which may extend to two hundred rupees.

Penalty for evading payment of coast-light dues, expenses or costs.

11. Where any dispute arises as to whether any coast-light dues, expenses or costs are payable in respect of any vessel under this Act, or as to the amount of such dues, expenses or costs, the dispute shall, on application made in that behalf by either of the disputing parties, be heard and determined in the Presidency-towns of Calcutta, Madras and Bombay, by a Presidency Magistrate, and, elsewhere, by any Magistrate exercising at the place where the dispute arises powers not less than those of a Magistrate of the second class ; and the decision of such Magistrate shall be final.

Determination of dispute as to liability to pay coast-light dues, expenses or costs.

12. Nothing in this Act shall be deemed to apply to any vessel belonging to, or in the service of, His Majesty or the Government, or to any vessel of war belonging to any Foreign Prince or State.

Saving for certain vessels.

THE SCHEDULE.

(See section 3.)

Vessels.	Maximum rate per net registered ton
<p>Class I. Steam-vessels departing from any port in the Presidency of Bombay, or from any port on the west coast of the South of India, and bound for or calling at any port on the east coast of the South of India; or <i>vice versa</i>.</p>	9 pies on account of the western, and 9 pies on account of the eastern, group of coast-lights.
<p>Class II. Steam-vessels departing from any port in the Presidency of Bombay, or from any port on the west coast of the South of India, bound for or calling at any port in India, east of the eighty-sixth meridian of Longitude E., and not calling at any port on the east coast of the South of India; or <i>vice versa</i>.</p>	9 pies on account of the western group of coast-lights.
<p>Class III. Steam-vessels departing from any port in the Presidency of Bombay, or from any port on the west coast of the South of India, and bound for or calling at any port outside India east of the seventy-eighth meridian of Longitude E.; or <i>vice versa</i>.</p>	9 pies on account of the western group of coast-lights.
<p>Class IV. Steam-vessels calling at or departing from any port on the east coast of the South of India and not included in any other class.</p>	9 pies on account of the eastern group of coast-lights.
<p>Class V. Steam-vessels departing from any port in the Presidency of Bombay, and bound for the port of Tellicherry or for any port in the Presidency of Madras north of the port of Tellicherry, or <i>vice versa</i>.</p>	5 pies on account of the western group of coast-lights.
<p>Class VI. Steam-vessels, not included in any other class, departing from any port in the Presidency of Bombay and bound for, or calling at, any port on the west coast of the South of India south of the port of Tellicherry; or <i>vice versa</i>.</p>	9 pies on account of the western group of coast-lights.
<p>Class VII. Steam-vessels, not included in any other class, calling at more than one port on the west coast of the South of India, or at more than one port on the east coast of the South of India.</p>	9 pies on account of the western or eastern group of coast-lights, as the case may be.
<p>Class VIII.* Sailing-vessels.</p>	... Half the rate which would be chargeable as aforesaid if they were steam-vessels.

* For the purposes of this Schedule, the expression "South of India" means any part of India south of a line drawn from Baidur on the west, to Ganjam on the east, coast of India, and the expression "Presidency of Bombay" does not include Aden.

THE INDIAN MARINE ACT, 1887.

(ACT XIV OF 1887.)

[Passed on the 30th June, 1887.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1887	XIV	Indian Marine ...	Rep. in pt., Act V of 1898. Am., Act XVII of 1898. Am., Act I of 1899.

An Act for the better administration of Her Majesty's Indian Marine Service.

47 & 48 Vict.,
c. 38. WHEREAS by the Indian Marine Service Act, 1884, it is, among
other things, enacted that the Governor General of India in Council shall
have power, subject to the provisions contained in the Indian Councils
24 & 25 Vict.,
c. 67. Act, 1861, as amended by subsequent Acts, at meetings for the purpose of
making Laws and Regulations, to make laws for all persons employed or
serving in, or belonging to, Her Majesty's Indian Marine Service :

Provided that—

- (a) a law made under that power shall not apply to any offence unless the vessel to which the offender belongs is at the time of the commission of the offence within the limits of Indian waters, which are defined by the said Indian Marine Service Act to include the high seas between the Cape of Good Hope on the west and the Straits of Magellan on the east, and all territorial waters between those limits ; and
- (b) the punishments imposed by any such law for offences shall be similar in character to, and shall not be in excess of, the punishments which may at the time of making the law be imposed for similar offences under the Acts relating to Her Majesty's Navy, except that in the case of persons other than Europeans or Americans imprisonment for any term not exceeding fourteen years, or transportation for life or any less term, may be substituted for penal servitude ;

And whereas it is further provided by the said Indian Marine Service Act that subject to the provisions of that Act a law made thereunder shall be of the same force and effect as an Act of Parliament and shall be taken notice of by all Courts of Justice in the same manner as if it were a public Act of Parliament ;

And whereas in pursuance of the power thus conferred and of all other powers vested in the Governor General in Council in this behalf it is expedient to make such laws as are mentioned in the said Indian Marine Service Act and to make provision in other particulars for the proper regulation of, and otherwise in relation to, the Indian Marine Service ;

And whereas the Secretary of State for India in Council has given his previous approval to the passing of this Act ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Title and com- 1. (1) This Act may be called the Indian Marine
mencement. Act, 1887 ; and

(2) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint in this behalf.

Definitions. 2. (1) In this Act, unless there is something repugnant in the subject or context,—

(a) " person subject to this Act " means a person who is employed or serves in, or belongs to, [1] the Royal Indian Marine Service (herein referred to as " the Indian Marine Service " or " Her Majesty's Indian Marine Service ") [1], and who, if he is not a gazetted officer, has been enrolled in that service in the manner provided by this Act :

[2] (b) " gazetted officer " means a person who, by virtue of his letter of appointment, is holding a position in the Indian Marine Service as—

Commander,
Lieutenant,
Sub-Lieutenant,

Chief Engineer,
Engineer, or
Assistant Engineer :

[2] (c) " warrant officer " means a person who, by virtue of his appointment, is holding a position in the Indian Marine Service as—

Assistant Surgeon,
Gunner,

Carpenter,
Clerk, or

Engine-driver, first class :

[2] (d) " petty officer " means a person who is employed in the Indian Marine Service as—

General Mess Steward,
Chief Syrang of Lascars, first class,
Chief Syrang of Lascars, second class,
Syrang of Lascars, first class,
Syrang of Lascars, second class,
Sukkani,
Tindal of Lascars, first class,
Tindal of Lascars, second class,
Engine-driver, second class,
Syrang of Stokers, first class,
Syrang of Stokers, second class,
Tindal of Stokers, first class,
Tindal of Stokers, second class,
Carpenter's Mate, first class,
Carpenter's Mate, second class,

Carpenter's Crew, first class,
Carpenter's Crew, second class,
Plumber,
General Mess Butler, first class,
General Mess Butler, second class,
Cook, first class,
Cook, second class,
Ship's Steward,
Tide-watcher,
Kassab, first class,
Kassab, second class,
Pilot,
Chart-room Attendant,
Leadsman, or
Interpreter :

(e) " superior officer," used with reference to an officer of a rank mentioned in clause (b), clause (c) or clause (d) of this subsection, means an officer of a rank mentioned before his in any of those clauses, and, used with reference to any other person subject to this Act, means an officer mentioned in any of those clauses :

Leg. Changes:—[1] These words were substituted for the words " the Indian Marine Service " by Act I of 1899. [2] Substituted by Act I of 1899.

- (f) "commanding officer" means the officer in command of a vessel, whether by special appointment or by the rules or customs of the service, and includes, as regards any persons subject to this Act who are employed otherwise than on board the vessel to which they belong, such officer, if any, as the Governor General in Council appoints instead of the commanding officer of that vessel, to discharge the functions of commanding officer with respect to those persons :
- (g) "enemy" includes a pirate or rebel :
- (h) "Indian Marine Court" means an Indian Marine Court held under this Act :
- (i) "Criminal Court" means a Court having ordinary criminal jurisdiction in British India or such a Court established elsewhere by the authority of the Governor General in Council :
- and
- (j) "prescribed" means prescribed by rules made by the Governor General in Council.

[1] (2) The Governor General in Council may, by notification in the Gazette of India, vary any of the definitions in clauses (b), (c) and (d) of sub-section (1) as occasion may appear to him to require, and the references to those clauses in the definition of the expression "superior officer" in clause (e) of that sub-section shall be construed to be references to them as varied by any notification published under this sub-section and for the time being in force.

3. (1) A person to be enrolled in the Indian Marine Service shall be brought on to the quarter-deck or other suitable place on boardship or on shore, and the commanding or other prescribed officer shall then—

- (a) cause to be read and explained to him the rules of the service,
- (b) administer to him an oath of allegiance, and
- (c) cause him to sign a roll.

(2) The rules, oath and roll shall be in prescribed forms.

4. In addition to any other rules which may be made under this Act, the Governor General in Council may, by notification in the Gazette of India, make rules consistent with this Act for the guidance of officers, whether military, Indian Marine, civil or political, in all matters connected with its enforcement.

CHAPTER II.

OFFENCES AND PUNISHMENTS.

Misconduct in the Presence of the Enemy.

Misconduct of commanding officer in action.

5. If a commanding officer—

- (i) upon signal of battle, or on sight of a vessel of an enemy which it is his duty to engage, does not use his utmost exertion to bring his vessel into action, or

Leg. Changes :—[1] Substituted by Act XVII of 1888.

(ii) does not during an action, in his own person and according to his rank, encourage his inferior officers and men to fight courageously, or

(iii) when capable of making a successful defence, surrenders his vessel to the enemy, or

(iv) in time of action improperly withdraws from the fight,

he shall,—

(a) if he has acted from cowardice, suffer penal servitude or such other punishment as is hereinafter mentioned ;

(b) if he has acted from negligence, or through other default, be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Not pursuing the
enemy or not assist-
ing a friend in view.

6. If any officer subject to this Act—

(i) forbears to pursue the chase of any enemy beaten or flying, or

(ii) does not relieve and assist a known friend in view to the utmost of his power, or

(iii) improperly forsakes his station,

he shall,—

(a) if he has acted from cowardice, suffer penal servitude or such other punishment as is hereinafter mentioned ;

(b) if he has acted from negligence, or through other default, be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Delaying or dis-
couraging action or
service, or deserting
post or sleeping on
watch.

7. If any person subject to this Act,—

(i) when any action, or service is commanded, presumes to delay or discourage the action or service upon any pretence whatever, or

(ii) in the presence or vicinity of the enemy deserts his post or sleeps upon his watch,

he shall suffer penal servitude or such other punishment as is hereinafter mentioned.

8. If any person subject to this Act, other than a commanding

Misconduct of
subordinate officers
and men in action.

officer, does not, when ordered to prepare for action, or during an action, use his utmost exertion to carry the orders of his superior officer into execution, he shall,—

(a) if he has acted from cowardice, suffer penal servitude or such other punishment as is hereinafter mentioned ;

(b) if he has acted from negligence, or through other default, be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Communications with the Enemy.

Corresponding, etc.,
with the enemy.

9. If any person subject to this Act—

- (i) treacherously holds correspondence with or gives intelligence to the enemy, or
- (ii) fails to make known to the proper authorities any information which he may have received from the enemy, or
- (iii) relieves the enemy with any supplies,

he shall suffer penal servitude or such other punishment as is hereinafter mentioned.

10. If any person subject to this Act holds, without any treacherous intention, any improper communication with the enemy, he shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Neglect of Duty.

11. If a person subject to this Act deserts his post or sleeps upon his watch, or negligently performs the duty imposed on him, he shall suffer imprisonment or such other punishment as is hereinafter mentioned.

Mutiny.

12. Where a mutiny is accompanied by violence, a person subject to this Act who joins therein shall suffer death or such other punishment as is hereinafter mentioned ; and

a person subject to this Act who does not use his utmost exertions to suppress the mutiny shall,—

- (a) if he has acted traitorously, suffer death or such other punishment as is hereinafter mentioned ;
- (b) if he has acted from cowardice, suffer penal servitude or such other punishment as is hereinafter mentioned ;
- (c) if he has acted from negligence, be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

13. Where a mutiny is not accompanied by violence, a ringleader thereof, being a person subject to this Act, shall suffer death or such other punishment as is hereinafter mentioned ; and all other persons subject to this Act who join in the mutiny, or do not use their utmost exertions to suppress it, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

14. A person subject to this Act who endeavours to seduce any other person subject to this Act from his duty or allegiance to Her Majesty, or endeavours to incite him to commit any act of mutiny, shall suffer death or such other punishment as is hereinafter mentioned.

15. A person subject to this Act who makes or endeavours to make any mutinous assembly, or leads or incites any other person to join in any mutinous assembly, or utters any words of sedition or mutiny, shall suffer penal servitude or such other punishment as is hereinafter mentioned.

Mutinous assembly or uttering seditious words.

16. A person subject to this Act who wilfully conceals any traitorous or mutinous practice or design, or any seditious or mutinous words spoken against Her Majesty, or any practice, design or words tending to the hindrance of the service, shall suffer penal servitude or such other punishment as is hereinafter mentioned.

Concealing traitorous, mutinous or seditious practice, design or words.

17. A person subject to this Act who strikes or attempts to strike, or uses or attempts to use any violence against, his superior officer, being in the execution of his office, or otherwise, shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Striking or using violence to superior officer.

Insubordination.

18. A person subject to this Act who wilfully disobeys any lawful command of his superior officer, or uses threatening or insulting language, or behaves with contempt, to his superior officer, shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Disobedience or using threatening language to superior officer.

Desertion and Absence without Leave.

Desertion.

19. A person subject to this Act who—

- (i) absents himself from his vessel or from the place where his duty requires him to be, with the intention of not returning to that vessel or place ; or
- (ii) at any time and under any circumstances, when absent from his vessel or place of duty, does any act which shows that he has an intention of not returning to that vessel or place ;

shall be deemed to have deserted, and shall suffer penal servitude or such other punishment as is hereinafter mentioned :

and in every such case he shall forfeit all pay, bounty, salvage, prize-money and allowances which may have been earned by him, and all annuities, pensions, gratuities, medals and decorations which may have been granted to him, and also all clothes and effects which he may have left on board the vessel or at the place from which he has deserted, unless it is otherwise directed by the Court by which he is tried or by the Governor General in Council.

20. A person subject to this Act who endeavours to seduce any other person subject to this Act to desert shall suffer imprisonment or such other punishment as is hereinafter mentioned.

Inducing any person to desert.

21. A person subject to this Act who, without being guilty of desertion, improperly leaves his vessel or place of duty shall suffer imprisonment or such other punishment as is hereinafter mentioned.

Breaking out of vessel.

22. A person subject to this Act who, without being guilty of desertion or of improperly leaving his vessel or place of duty, is absent without leave shall suffer imprisonment for any period not exceeding ten weeks or such other punishment as the circumstances of the case may require.

Absence without leave.

Miscellaneous Offences.

23. A person subject to this Act who is guilty of any drunkenness on boardship or on duty shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Drunkenness on boardship or on duty.

24. An officer subject to this Act who is guilty of cruelty, or of any scandalous or fraudulent conduct, or of any other conduct unbecoming the character of an officer, shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Cruelty or misconduct by officer.

25. A person subject to this Act who designedly or negligently, or by any default, loses, strands or hazards, or suffers to be lost, stranded or hazarded, any vessel of the Indian Marine Service shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Suffering vessel to be lost or imperilled.

26. An officer in command of an Indian Marine vessel who receives on board, or permits to be received on board, the vessel any goods or merchandise whatsoever, other than for the sole use of the vessel, except gold, silver or jewels, and except goods and merchandise, belonging to any merchant or on board any vessel which may be shipwrecked or in imminent danger either on the sea or in some port, creek, harbour or river, for the purpose of preserving them for their proper owners, or except such goods or merchandise as he may at any time be ordered to take or receive on board by order of the Government or his superior officer, shall be dismissed from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

Unlawful taking of goods on board.

27. A person subject to this Act who wastefully expends, embezzles or fraudulently buys, sells or receives any ammunition, provisions or other public stores, or knowingly permits any such wasteful expenditure, embezzlement or fraudulent purchase, sale or receipt, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

Embezzling public stores.

28. A person subject to this Act who unlawfully sets fire to any dockyard, victualling yard, steam-factory yard, arsenal, magazine, building or stores, or to any ship, boat or other craft or furniture thereunto belonging, not being the property of an enemy, shall suffer penal servitude or such other punishment as is hereinafter mentioned.

Arson.

29. A person subject to this Act who knowingly makes or signs a false muster or record or other official document, or who commands, counsels or procures the making or signing thereof, or who aids or abets any other person in the making or signing thereof, shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned.

30. A person subject to this Act who wilfully does any act or wilfully disobeys any order, whether in hospital or elsewhere, with intent to produce or to aggravate any disease, or infirmity or to delay his cure, or who feigns any disease, infirmity or inability to perform his duty, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

31. A person subject to this Act who has any cause of complaint, either upon the ground of the unwholesomeness of the victuals or upon any other ground, shall quietly make the same known to his commanding officer, and that officer shall inquire into the complaint and shall, as far as he is able, cause the same to be presently remedied, or shall report the case to the Director of Marine : and any person subject to this Act who, upon any pretence whatever, attempts to stir up any disturbance on any such ground shall suffer imprisonment or such other punishment as is hereinafter mentioned.

32. A person subject to this Act who is guilty of any act, disorder or neglect, to the prejudice of good order and discipline, not hereinbefore specified, shall be dismissed with disgrace from the Indian Marine Service or suffer such other punishment as is hereinafter mentioned :

Provided that, if such act, disorder, or neglect constitutes an offence punishable under the law of British India with imprisonment for a term which may exceed seven years, the person guilty thereof shall not be tried under this Act as for an offence punishable under this section.

33. A person subject to this Act who does not use his utmost exertion to detect, arrest and bring to punishment all offenders against this Act, and does not assist the officers appointed for that purpose, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

34. A person subject to this Act who being duly summoned or ordered to attend as a witness before an Indian Marine Court or a commanding officer exercising jurisdiction under this Act, or to produce any document in his power or control before such a Court or officer, refuses, or neglects to attend to give his evidence upon oath or to produce the document, or behaves, with contempt to the Court or officer, shall suffer imprisonment which may extend to three months in the case of such refusal or neglect and to one month in the case of such contempt.

35. A person subject to this Act who, when examined on oath before an Indian Marine Court or a commanding officer exercising jurisdiction under this Act, intentionally gives false evidence, shall suffer imprisonment for a term which may extend to seven years.

Offences punishable by Ordinary Law.

36. If a person subject to this Act is guilty of any criminal offence which if committed in British India would be punishable by the law of British India, he shall, subject to the other provisions of this Act, be liable to the same punishment as might for the time being be awarded in British India by any ordinary criminal tribunal competent to try him if the offence had been committed in British India :

47 & 48 Vict.,
c. 38.

Provided that, except as authorised by the Indian Marine Service Act, 1884, and by this Act, the punishment awarded for the offence shall not be dissimilar in character to or in excess of the punishment which may at the time of the passing of this Act be imposed for a similar offence under the Acts relating to Her Majesty's Navy.

Punishments.

Schedule of 37. (1) The following punishments may be inflicted under this Act :—

- (a) death ;
- (b) penal servitude ;
- (c) dismissal with disgrace from the Indian Marine Service ;
- (d) imprisonment ;
- (e) dismissal from the Indian Marine Service ;
- (f) loss of seniority as an officer for a specified time or otherwise ;
- (g) dismissal from the vessel to which the offender belongs ;
- (h) severe reprimand, or reprimand ;
- (i) disrating a warrant-officer or petty officer or any other person below that rank ;
- (j) forfeiture of pay, bounty, salvage, prize-money and allowances earned by, and of all annuities, pensions, gratuities, medals and decorations granted to, the offender, or of any one or more of the above particulars ; also, in the case of desertion, of all clothes and effects left by the deserter on board the vessel to which he belongs.

(2) Each of the above punishments shall be deemed to be inferior in degree to every punishment preceding it in the above scale.

Regulations as to
the infliction of
punishments.

38. The following regulations shall apply to the infliction of punishments :—

(1) The punishment of penal servitude may, except when otherwise provided by this Act, be inflicted for the term of life or for any other term not less than four years.

(2) In the case of persons other than Europeans or Americans, transportation for life or for any term not less than four years, or imprisonment for any term not exceeding fourteen years, shall be substituted for penal servitude.

(3) The punishment of penal servitude or of transportation, or of imprisonment for more than two years when substituted for penal servitude under the provisions of this Act, shall in all cases involve dismissal from the Indian Marine Service, with or without disgrace, as the prescribed authority may direct.

(4) Dismissal with disgrace shall involve in all cases forfeiture of all pay, bounty, salvage, prize-money and allowances earned by, and of all annuities, pensions, gratuities, medals and decorations granted to, the offender, and an incapacity to serve the Government again in any capacity.

(5) A sentence of dismissal with disgrace may in any case be accompanied by a sentence of imprisonment.

(6) Except as otherwise provided by this Act, a sentence of imprisonment passed otherwise than under clause (2) of this section may extend to two years.

(7) A sentence of imprisonment may be accompanied by a direction that the imprisonment shall be rigorous for the whole or any part of the term thereof.

(8) When a sentence of imprisonment is passed on a warrant-officer or petty officer or any other person below that rank, it may be accompanied by a direction disrating the officer or person.

(9) A sentence of imprisonment shall in all cases be accompanied by forfeiture of pay and allowances during the imprisonment.

39. Subject to the foregoing regulations and the other provisions of this Act, where any punishment is specified by this Act as the penalty for an offence, and it is further declared that another punishment may be awarded in respect of the same offence, the expression "other punishment" shall be deemed to comprise any one or more of the punishments inferior in degree to the specified punishment according to the scale set forth in section 37.

40. No person, unless he is an offender who has avoided arrest or fled from justice, shall be tried or punished in pursuance of this Act for any offence committed by him unless the trial takes place within three years from the commission of the offence, or within one year after the return of the offender to British India when he has been absent from British India during that period of three years.

CHAPTER III.

JURISDICTION AND POWERS.

41. Subject to the provisions of this Act, and, as respects Criminal Courts, subject to the law relating to criminal procedure for the time being applicable to those Courts, Criminal Courts and Indian Marine Courts or both shall have jurisdiction in respect

Offences cognizable by Criminal Courts and Indian Marine Courts respectively.

of the offences punishable under this Act as specified in the following table:—

Section of this Act.	Marginal note.	Courts having jurisdiction.
Section 5	Misconduct of commanding officer in action.	Criminal Courts and Indian Marine Courts.
" 6	Not pursuing the enemy or not assisting a friend in view.	
" 7	Delaying or discouraging action or service or deserting post or sleeping on watch.	
" 8	Misconduct of subordinate officers and men in action.	
" 9	Corresponding, etc., with the enemy.	
" 10	Improper communication with the enemy ...	Indian Marine Courts.
" 11	Neglect of duty ...	
" 12	Mutiny accompanied by violence ...	
" 13	Mutiny not accompanied by violence ...	
" 14	Inciting to mutiny ...	
" 15	Mutinous assembly or uttering seditious words.	Criminal Courts and Indian Marine Courts.
" 16	Concealing traitorous, mutinous or seditious practice, design or words.	
" 17	Striking or using violence to superior officer.	
" 18	Disobedience or using threatening language to superior officer.	
" 19	Desertion ...	
" 20	Inducing any person to desert ...	Criminal Courts and Indian Marine Courts.
" 21	Breaking out of vessel ...	
" 22	Absence without leave ...	
" 23	Drunkenness on boardship or on duty ...	
" 24	Cruelty or misconduct by officer ...	
" 25	Suffering vessel to be lost or imperilled ...	Indian Marine Courts.
" 26	Unlawful taking of goods on board ...	
" 27	Embezzling public stores ...	
" 28	Arson ...	
" 29	Making false documents ...	
" 30	Malingering or misconduct in hospital ...	Indian Marine Courts.
" 31	Creating disturbance on account of complaints.	
" 32	Offences to the prejudice of good order and discipline not otherwise specified.	
" 33	Not assisting in arresting offenders ...	
" 34	Contempt of Court ...	
" 35	False evidence ...	Criminal Courts and Indian Marine Courts.
" 36	Offences punishable by ordinary law ...	

Power to pass sentences.

42. Subject as aforesaid—

(a) a Criminal Court may pass a sentence of death, penal servitude, transportation or imprisonment; and

- (b) an Indian Marine Court may pass any sentence authorized by this Act except a sentence of death, penal servitude or transportation or of imprisonment for a term exceeding two years.

43. (1) An offence triable by an Indian Marine Court and committed by a person other than a gazetted officer may, under such regulations as the Governor General in Council may make, be summarily tried and punished by the commanding officer of the offender.

Jurisdiction and powers of commanding officers.

(2) Subject to the provisions of this Act and to such restrictions as the Governor General in Council may impose, a commanding officer may pass a sentence of imprisonment for a period not exceeding three months on an offender below the position of petty officer, and may disrate any warrant-officer or petty officer or any other person below that rank.

44. A person subject to this Act who is accused of an offence which this Act applies may be tried and punished for the offence by a Criminal Court in any place where he may happen to be in the same manner as if the offence had been committed in that place.

Place of trial.

45. Where such an offence has been committed by any person while subject to this Act, he may be taken into custody and be tried and punished for the offence, although he has ceased to be subject to this Act, in like manner as he might have been taken into custody and tried and punished if he had continued to be so subject.

Jurisdiction over person ceasing to be subject to Act.

46. When a person subject to this Act is accused of an offence in respect of which a Criminal Court has jurisdiction over him under this Act or otherwise the following rules shall apply, namely:—

Case of person charged with an offence cognizable by a Criminal Court.

- (a) any person subject to this Act shall, on application made to him by the Court, assist in arresting and securing the accused, and the commanding officer shall, if so required by the Court, deliver the accused to the Court;
- (b) when no requisition is made under clause (a), the commanding officer may, if he thinks fit, place the accused in custody with a view to delivering him up to such Criminal Court as appears to him most convenient in all the circumstances of the case.

47. When a person subject to this Act is accused of an offence in respect of which an Indian Marine Court or a commanding officer has jurisdiction under this Act, and that person is within the jurisdiction of any civil, political or police officer, that officer shall, upon an application to that effect made to him by the commanding officer of that person or any prescribed authority, aid in the arrest of the person and deliver him when arrested into such custody as the commanding officer or the prescribed authority may require.

Case of person charged with an offence cognizable by an Indian Marine Court or commanding officer.

48. When an Indian Marine Court or commanding officer under this Act, and a Criminal Court under this Act or otherwise, have concurrent jurisdiction in respect of an offence, and there is a difference of opinion as to the tribunal before which the person accused of the offence should be proceeded against, either tribunal shall, on the requisition of the other, stay proceedings pending a reference to the Governor General in Council, whose order as to the tribunal before which the proceedings are to be had shall be final.

49. An offender shall not be tried by an Indian Marine Court or by his commanding officer for any offence of which he has been convicted or acquitted by a Criminal Court or an Indian Marine Court or, in exercise of the powers conferred by section 43, by his commanding officer.

50. Where a person liable to be tried by an Indian Marine Court under this Act is in confinement in pursuance of a sentence of a Criminal Court, the Director of Marine or other prescribed authority may make an order in the form in Schedule B to the Prisoners' Testimony Act, 1869, directed to the officer in charge of the place in which the person is confined, and the provisions of that Act with respect to compliance with any order made thereunder shall, so far as they can be made applicable, apply in the case of any order made under this section.

51. The Governor General in Council may suspend, annul or modify any sentence passed by an Indian Marine Court or a commanding officer under this Act, or substitute a punishment inferior in degree for the punishment involved in any such sentence, or remit the whole or any portion of the punishment involved in any such sentence, or remit the whole or any portion of any punishment into which the punishment involved in any such sentence has been commuted; and any sentence so modified shall, subject to the provisions of this Act, be valid, and shall be carried into execution as if it had been originally passed with such modification by the Court or officer, but so that the punishment involved in any sentence be not increased by any such modification.

CHAPTER IV.

INDIAN MARINE COURTS.

Constitution of the Court.

Power to convene
Indian Marine
Court.

52. (1) The following authorities shall have power to convene Indian Marine Courts, namely :—

- (a) the Governor General in Council;
- (b) the Director of Marine;
- (c) an officer empowered in that behalf by warrant of the Governor General in Council:

Provided that an Indian Marine Court assembled for the trial of a gazetted officer shall be convened only by, or with the previous sanction of, the Governor General in Council.

(2) When a ship or ships is or are detached on separate service, and when immediate example is necessary and without detriment to the public service reference cannot be made to superior authority, the officer in command of the ship or ships may, without warrant, convene an Indian Marine Court for the trial of any person under his command being subject to this Act and below the rank of a gazetted officer.

Composition of Indian Marine Court 53. [1] (1) An Indian Marine Court shall consist of a president and not less than two, or more than four, other members, such members to be of rank not inferior to that of Lieutenant.

[1] (2) The president of an Indian Marine Court for the trial of a Commander shall be of rank not below that of Commander, and two at least of the other officers composing the Court shall be of rank not below that of Commander.

[1] (3) Except in the case of an Indian Marine Court convened under section 52, sub-section (2), the president of an Indian Marine Court for the trial of any person below the grade of Commander shall be of rank not below that of Commander.

(4) A person acting as prosecutor shall not be a member of the Court.

(5) An officer convening an Indian Marine Court shall not sit thereon except as permitted by the proviso to sub-section (1).

(6) The president and the other members of every Indian Marine Court shall be named by the authority convening the same.

(7) When an Indian Marine Court, after the commencement of the trial, is reduced to a less number than three members, it shall be deemed to be dissolved.

(8) In the case of the death or unavoidable absence of the president of an Indian Marine Court, the next senior member of the Court, if qualified under sub-section (2) or sub-section (3), as the case may be, shall take the place of the president without special appointment as such.

(9) If such next senior member is not qualified as aforesaid, the Court shall be deemed to be dissolved.

[2] (10) The seniority and precedence of officers serving on the same Indian Marine Court shall be governed by their seniority as shown in the latest Indian Marine List. The fact of any officer bearing a superior title by virtue of an appointment which he may for the time being be holding, shall not give him seniority or precedence over any officer serving with him on the Indian Marine Court who may be senior to him on the Indian Marine List.

[2] (11) The authority convening an Indian Marine Court shall, when practicable, appoint a Judge Advocate to every trial, who shall be, if possible, an officer of the Judge Advocate-General's Department.

[2] (12) The authority convening an Indian Marine Court shall also appoint a person as Provost-Marshal, who shall be responsible for the arrest and safe custody of the prisoner or prisoners as directed, until the

Leg. Changes:—[1] Sub-sections 1, 2 and 3 of S. 53 were substituted by Act I of 1899. [2] Sub-sections 10, 11 and 12 of S. 53 were added by Act I of 1899.

decision of the confirming authority is made known and communicated to him by the convening authority.

Procedure at the Trial.

54. An Indian Marine Court shall be held on board one of Her Majesty's Indian Marine vessels or on land.

Place of sitting
of Indian Marine
Court.

55. As soon as an Indian Marine Court is assembled, the names of the members of the Court shall be read over to the prisoner, who shall be asked if he objects to being tried by any of them; if the prisoner objects to any member, the objection shall be decided by the Court; if the objection is allowed, the place of the member objected to shall be filled up by the officer next in seniority available for the duty who is not on the Court, subject to the regulations contained in section 53, sub-sections (2), (3), (4) and (5):

Challenge.

Provided that where the Court is composed as in the proviso to section 53, sub-section (1), and no officer qualified under that section is available to take the place of the officer objected to, the Court shall, after recording the objection, proceed with the trial in like manner as if the objection had been disallowed.

56. (1) Before an Indian Marine Court proceeds to try a prisoner, an oath shall be made by every member of the Court in the prescribed manner.

Oaths.

(2) An oath shall be made in the prescribed manner by any person who gives evidence or acts as an interpreter before an Indian Marine Court.

57. When no specific charge is made against any person subject to this Act for, or in respect or in consequence of, the wreck, loss, destruction or capture of any vessel, in the Indian Marine Service, all the officers and crew of the vessel may, if the authority convening the Court thinks fit, be tried together before one and the same Indian Marine Court; and any of them, when upon his trial, may be called upon to give evidence on oath touching any of the matters then under inquiry, but no person shall be obliged to give any evidence which may tend to criminate himself.

Trial of officers
and crew by one
Court.

58. (1) If by reason of the illness of the prisoner before the finding it is impossible to continue the trial, an Indian Marine Court shall be deemed to be dissolved:

Dissolution of
Court on illness of
prisoner.

Provided that, where more prisoners than one are being tried and the trial of only one or some of them is rendered impossible by illness, the Court may, if it sees fit, continue the trial of the other or others, and, where the Court so continues the trial, it shall be deemed to have been dissolved only with respect to the prisoner or prisoners whose illness caused the continuance of his or their trial to be impossible.

(2) When the illness with which a prisoner is affected is insanity, the Court shall proceed, as nearly as circumstances admit, in the same manner as a Magistrate or Court may proceed, under section 466 of the

Code of Criminal Procedure, 1882, when an accused person is found to be of unsound mind and incapable of making his defence.

59. Subject to the provisions of the last foregoing section, where an Indian Marine Court is dissolved under that section or section 53, sub-section (7) or sub-section (9), the proceedings are null and void, and the prisoner may be tried before another Indian Marine Court on the same charge or charges.

Re-trial of prisoner after dissolution of Court.

60. The president may, on any deliberation among the members, cause an Indian Marine Court to be cleared of all other persons.

Clearing of Court.

61. Every decision of an Indian Marine Court shall be passed by a majority of votes, and where there is an equality of votes the president shall have a second or casting vote :
Decision of Court.

Provided that if there is an equality of votes on the finding the decision shall be in favour of the prisoner.

62. (1) Every person who may be required to give evidence or to produce a document before an Indian Marine Court shall be summoned in the prescribed manner.

Summoning witnesses.

(2) A summons issued under this section may be sent to any officer exercising magisterial powers within whose jurisdiction the person summoned may be or resides, and the officer shall give effect to the summons as if the witness were required to attend in his Court.

63. When a person subject to this Act who, being duly summoned or ordered to attend as a witness before an Indian Marine Court, behaves with contempt to the Court, the Court, if it thinks fit, instead of reserving him for trial by another Court for an offence under section 34, may, by order under the hand of the president, sentence him to imprisonment for a term which may extend to one month.

Summary punishment of certain contempts.

Confirmation of Findings and Sentences.

64. (1) The president of an Indian Marine Court shall date and sign the proceedings of the Court and submit them, as soon as possible after their completion, to the confirming authority.

Submission of proceedings to confirming authority.

(2) If the Court has made a recommendation to mercy, the recommendation shall be recorded and submitted to the confirming authority as part of the proceedings.

65. A finding or sentence of an Indian Marine Court shall not be valid except in so far as it may be confirmed by the confirming authority.

Confirmation of findings and sentences.

66. (1) The confirming authority shall ordinarily be the authority convening the Court.

Confirming authority.

(2) But if the Court was convened for the trial of a gazetted officer with the previous sanction of the Governor General in Council, or if in the case of a Court convened for the trial of any other person subject to this Act, the Governor General in Council is of opinion that the authority convening the Court cannot act, or cannot conveniently act, as the confirming authority, the confirming authority shall be the Governor General in Council.

(3) The fact that the Governor General in Council has acted as the confirming authority with respect to any finding or sentence shall be conclusive proof that he was the proper confirming authority with respect thereto.

67. (1) The confirming authority may send back the finding and sentence of an Indian Marine Court, or either of them, for revision ; and, on the finding or sentence being sent back, the Court may, if so directed by the confirming authority, receive additional evidence.

(2) Where the finding only is sent back for revision, the Court may revise the sentence also.

(3) The confirming authority may, in confirming the sentence of an Indian Marine Court,—

(a) reduce the punishment thereby awarded, or commute that punishment to any other punishment of inferior degree to which the offender might have been sentenced by the Court ;

(b) suspend for such time as seems expedient the execution of the sentence ;

(c) if the finding or sentence is informally expressed, vary the form thereof, or, if the sentence is invalid, substitute a valid sentence therefor.

(4) Notwithstanding any error, omission or irregularity in any proceeding of an Indian Marine Court, the confirming authority may confirm the finding or sentence of the Court, or either of them, unless the error, omission or irregularity has, in the opinion of that authority, occasioned a failure of justice.

Evidence.

I of 1872.

68. The Indian Evidence Act, 1872, subject to such modifications therein as the Governor General in Council may, by notification in the Gazette of India, direct, shall apply to all proceedings before Indian Marine Courts.

Preservation of Proceedings.

69. (1) The proceedings of all Indian Marine Courts shall be preserved in the office of the Director of Marine for not less than seven years in the case of the trial of a gazetted officer, or than three years in the case of any other person.

(2) Any person tried by an Indian Marine Court shall be entitled, on demand at any time after the confirmation of the finding and sentence of the Court and before the proceedings are destroyed, to obtain from the

officer or person having the custody of the proceedings a copy thereof, upon payment for the same at the prescribed rate.

Power to make Rules respecting Procedure.

70. (1) The Governor General in Council may make rules to regulate the procedure of Indian Marine Courts, and for the purpose of carrying this Act into execution, so far as relates to the investigation, trial and punishment of offences triable by those Courts.

Power to make rules respecting procedure.

(2) The Governor General in Council may by any such rule confer on an Indian Marine Court any power (other than a power to try an accused person or pass a sentence) conferred on a Court of original criminal jurisdiction by the Code of Criminal Procedure.

X of 1882.

Supplemental.

[1] 70-A. When an Indian Marine vessel is wrecked, lost, destroyed or captured by the enemy, it shall, for the purposes of this Act, be deemed to remain an Indian Marine vessel until her crew are regularly removed into some other Indian Marine vessel or until a Court of Inquiry has been held into the cause of the wreck, loss, destruction or capture thereof.

Provision in case of wreck, loss, destruction or capture of Indian Marine vessel.

CHAPTER V.

SUPPLEMENTAL CRIMINAL PROVISIONS.

Procedure of Criminal Courts beyond British India.

71. The law relating to criminal procedure for the time being in force in British India shall, subject to such modifications as the Governor General in Council, by notification in the Gazette of India, directs, apply to all proceedings under this Act in Criminal Courts beyond the limits of British India.

Procedure of Criminal Courts beyond British India.

Arrest.

72. The following rules shall apply to persons subject to this Act when charged with offences under this Act :—

Arrest of offenders.

(1) Every such person shall be placed in custody, but no person shall be detained in custody longer than is necessary for the purposes of justice.

(2) "Custody" means, according to the usage of the service, the putting of the offender under arrest or the putting him in confinement.

(3) Any officer, or if more officers than one are present, the senior of them, may order into custody any other person of inferior rank subject to this Act.

(4) The charge made against every person taken into custody shall, without unnecessary delay, be investigated by his commanding officer or

Leg. Changes :— [1] Inserted by Act I of 1899, S. 5.

other prescribed authority; and, as soon as may be, proceedings shall be taken for punishing the offender or discharging him from custody.

73. A commanding officer shall, upon an investigation being made into a charge against a person subject to this Act and under his command of having committed an offence under this Act, dismiss the charge if he thinks that it ought not to be proceeded with; but when he thinks the charge ought to be proceeded with, he shall, subject to the provisions of this Act, take steps without delay for bringing the offender to trial.

Power of commanding officer.

Execution of Sentences of Indian Marine Courts and Commanding Officers.

74. (1) Every term of imprisonment awarded in pursuance of the sentence of an Indian Marine Court or of a commanding officer exercising jurisdiction under this Act shall, except as provided in sub-section (2), be deemed to commence on the day on which the original sentence was signed by the president of the Court or pronounced by the commanding officer.

Commencement of sentences of imprisonment.

(2) When a person already undergoing a sentence of penal servitude, transportation or imprisonment is sentenced by an Indian Marine Court to imprisonment, that imprisonment shall commence at the expiration of the penal servitude, transportation or imprisonment to which he has previously been sentenced:

Provided that when, under this sub-section, at the expiration of a term of imprisonment to which a person has been sentenced by an Indian Marine Court, another term of imprisonment to which he has been similarly sentenced commences, and the aggregate term of imprisonment to which he would be thus liable would, as reckoned from the commencement of such imprisonment, exceed two years, so much of that term as is in excess of two years shall be deemed to be remitted.

75. (1) A person sentenced by an Indian Marine Court, or by a commanding officer exercising jurisdiction under this Act, to imprisonment shall be detained in the prescribed custody until he is transferred to a prison.

Execution of such sentences.

(2) A person sentenced as aforesaid shall, as soon as may be practicable, be transferred to a prison in British India, and shall be delivered over with a warrant of commitment in the prescribed form signed by the prescribed authority to the officer in charge of that prison.

(3) A person transferred to a prison under sub-section (2) shall thereafter be dealt with in all respects as if he were detained in that prison under a sentence of a Criminal Court:

Provided that—

(a) when he is a person sentenced to imprisonment by his commanding officer, the commanding officer, or the Director of Marine, may at any time by order in writing direct that he be discharged;

- (b) the Director of Marine or any commanding officer may, by order in writing, direct that any person so transferred shall be delivered over to the prescribed custody for the purpose of being brought before an Indian Marine Court either as a witness or for trial or otherwise, and that he shall again be transferred to the prison.

Savings.

Saving of authority of ordinary Courts.

76. Except as expressly provided by this Act, nothing in this Act shall affect the jurisdiction or powers of any Court of criminal jurisdiction.

Minor punishments.

77. Nothing in this Act shall affect any rules, regulations, conditions or customs of the Indian Marine Service now or hereafter in force under which any person may be liable—

- (a) to dismissal, loss of seniority, disrating, forfeiture or stoppages ; or
(b) to any restriction not amounting to custody, or any deprivation of indulgence or additional duty, imposed in the way of discipline.

Amendment of Acts.

78. [Amendment of Act X of 1882, section 54 (Arrest of Deserters).] Rep. by the Code of Criminal Procedure, 1898 (Act V of 1896).

Amendment of Chapter VII of the Penal Code (Offences relating to Army and Navy).

79. After section 138 of the Indian Penal Code XLV of 1860 the following section shall be inserted, namely :—

Application of foregoing sections to the Indian Marine Service.

“ 138-A. The foregoing sections of this Chapter shall apply as if Her Majesty's Indian Marine Service were comprised in the Navy of the Queen.”

CHAPTER VI.

PROVISIONS OF CIVIL LAW.

Exemption from Process.

80. (1) A person below the position of gazetted officer shall not, while subject to this Act, be liable to be taken out of the Indian Marine Service by any process, execution or order of any Court of law, or otherwise, or be compelled to appear in person before any Court of law except in respect of the following matters, or one of them ; that is to say :—

Exemption from arrest for debt.

- (a) on account of a criminal charge or conviction ;
(b) on account of a decree for money, when the amount exceeds three hundred rupees over and above the costs of the suit.

(2) The Judge of any such Court may examine into any complaint made by any such person, or his superior officer, of the arrest of the person contrary to the provisions of this section, and may by order under

his hand discharge the person, and award reasonable costs to the complainant, who may recover those costs as he might have recovered costs awarded to him by a decree against the person obtaining the process.

81. The clothes, equipment or arms of a person subject to this Act shall not be seized, nor shall the pay and allowances or any part thereof of any such person below the position of a gazetted officer be attached, in execution of any decree or order enforceable against him by any Court of Civil Judicature.

Property of Deceased Persons and Deserters.

Disposal of property of deceased persons and deserters.

82. The following rules are enacted respecting the disposal of the property of any person subject to this Act who dies or deserts :—

(1) The commanding officer shall secure all the moveable property which is on the spot and cause an inventory thereof to be made.

(2) In the case of a deceased person, if his representative is on the spot and gives security for the payment of the ship and service debts of the deceased, the commanding officer shall deliver over the property to that representative.

(3) In the case of a deceased person, if the property is not dealt with under clause (2), and in the case of every deserter, the commanding officer shall cause the property to be sold by public auction, and from the proceeds of the sale shall pay the ship and service debts and, in the case of a deceased person, the expenses of his funeral ceremonies.

(4) The surplus, if any, shall in the case of a deceased person be paid to his representative.

(5) In the event of no claim for the surplus of a deceased person's estate being established within twelve months after his death, and immediately after the sale of the effects of a deserter, the amount remaining in the hands of the commanding officer shall be remitted to the Director of Marine.

(6) Property deliverable or money payable to the representative of a deceased person under this section may, if the value or amount thereof does not exceed one thousand rupees and the Director of Marine or the prescribed authority thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it, or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence of title; and such delivery or payment shall be a full discharge to the person ordering or making the same and to the Secretary of State for India in Council from all further liability in respect of the property or money; but nothing in this section shall affect the rights of any executor or administrator or other representative or of any creditor of a deceased person against a person to whom any such delivery or payment has been made.

(7) A person shall be deemed to have deserted within the meaning of this section who has been convicted of desertion, or who has been absent without leave for a period of thirty days from the Indian Marine Service, and has not subsequently surrendered or been arrested.

S. 3 ACT XV OF 1872 (CHRISTIAN MARRIAGE). Marriage (Christian)

THE INDIAN CHRISTIAN MARRIAGE ACT, 1872.

(ACT XV OF 1872.)

[Passed on the 18th July, 1872.]

HISTORICAL MEMOIR.

For Acts and Statutes before the Act (XV of 1872), see Schedule V to this Act (XV of 1872) and Act XXV of 1864 (Marriage of Christians) which was repealed by Act V of 1866, which was repealed by this Act (XV of 1872).

Year.	No. of Act.	Name of Act.	How affected.
1872	XV	Indian Christian Marriage ...	Rep., in pt., XVI of 1874. „ and Am., Act XII of 1891. Am., Act VI of 1896, S. 30. „ Act II of 1891. „ Act I of 1903, Sch. II. „ Act XIII of 1911. „ Act X of 1914.

An Act to consolidate and amend the law relating to the solemnization in India of the marriages of Christians.

WHEREAS it is expedient to consolidate and amend the law relating to the solemnization in India of the marriages of persons professing the Christian religion; It is hereby enacted as follows :—

PRELIMINARY.

Short title. 1. This Act may be called the Indian Christian Marriage Act, 1872.

Extent. It extends to the whole of British India, and, so far only as regards Christian subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty.

[Commencement.] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

Enactments repealed. 2. The enactments specified in the fifth schedule hereto annexed are repealed, but not so as to invalidate any marriage confirmed by, or solemnized under, any such enactment.

And all appointments made, licenses granted, consents given, certificates issued, and other things duly done under any such enactment shall be deemed to be respectively made, granted, given, issued and done under this Act.

For clause XXIV of section 19 of the Court Fees Act, 1870, the VII of 1870. following shall be substituted :—

“XXIV, Petitions under the Indian Christian Marriage Act, 1872, sections 45 and 48.”

Interpretation-clause. 3. In this Act, unless there is something repugnant in the subject or context,—
“Church of England” and “Anglican” mean and apply to the Church of England as by law established;

Marriage (Christian) ACT XV OF 1872 (CHRISTIAN MARRIAGE). S. 4.

"Church of Scotland" means the Church of Scotland as by law established ;

"Church of Rome" and "Roman Catholic" mean and apply to the Church which regards the Pope of Rome as its spiritual head ;

"Church" includes any chapel or other building generally used for public Christian worship ;

"minor" means a person who has not completed the age of twenty-one years and who is not a widower or a widow ;

"Native State" means the territories of any Native Prince or State in alliance with Her Majesty :

the expression "Christians" means persons professing (a) the Christian religion ;

and the expression "Native Christians" includes the Christian descendants of Natives of India converted to Christianity, as well as such converts ;

[1] "Registrar General of Births, Deaths and Marriages" means a Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886 [1].

VI of 1886.

PART I.

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED.

4. Every marriage between persons, one or both of whom is [2] or are [2] a Christian, or Christians, shall be solemnized in accordance with the provisions of the next following section ; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

Marriages to be solemnized according to Act.

Persons (b) by whom marriages may be solemnized.

5. Marriages may be solemnized in India—

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister ;

(2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland ;

(3) by any Minister of religion licensed under this Act to solemnize marriages ;

(4) by, or in the presence of, a Marriage Registrar (c) appointed under this Act ;

(5) by any person licensed under this Act to grant certificates of marriage between Native Christians.

* * * * *

Leg. Changes :—[1] Added by Act VI of 1886, S. 30, cl. (a). [2] Inserted by the Repealing and Amending Act (XII of 1891).

Case-law :—(a) *E.g.*, a baptised child of three years, 18 M. 280. (b) Persons authorized to perform marriages, 19 M. 273. (c) Attending merely as a relation of the bride for the purpose of giving her away, does not come within the meaning of S. 4, 14 M. 343.

PART II.

TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED.

10. Every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening :

Time for solemnizing marriage.

Provided that nothing in this section shall apply to—

Exceptions.

(1) a Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, under the hand and seal of the Anglican Bishop of the Diocese or his Commissary, or

(2) A Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized, or from such person as the same Bishop has authorized to grant such license, [1] or

(3) a Clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies and customs of the Church of Scotland [1].

11. No Clergyman of the Church of England shall solemnize a marriage in any place other than a church [2] where worship is generally held according to the forms of the Church of England, [2]

Place for solemnizing marriage.

unless there is no [3] such church within five miles distance by the shortest road from such place, or

unless he has received a special license authorizing him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary.

For such special license, the Registrar of the Diocese may charge such additional fee as the said Bishop from time to time authorizes.

Fee for special license.

PART III.

**MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION
LICENSED UNDER THIS ACT.**

12. Whenever a marriage is intended to be solemnized by a Minister of Religion (a) licensed to solemnize marriages under this Act—

Notice of intended marriage.

one of the persons intending marriage shall give notice in writing, according to the form contained in the first schedule hereto annexed, or

Leg. Changes:—[1] This portion was added by Act II of 1891, S. 2. [2] Added by Act II of 1891, S. 3. [3] The word "such" was inserted by Act II of 1891, S. 3.

Case-law:—(a) Episcopally ordained persons excluded, 19 M. 273.

Marriage (Christian) ACT XV OF 1872 (CHRISTIAN MARRIAGE). S. 13

to the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage, and shall state therein—

- (a) the name and surname, and the profession or condition, of each of the persons intending marriage,
- (b) the dwelling-place of each of them,
- (c) the time during which each has dwelt there, and
- (d) the church or private dwelling in which the marriage is to be solemnized :

Provided that, if either of such persons has dwelt in the place mentioned in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

13. If the persons intending marriage desire it to be solemnized in a particular church, and if the Minister of Religion to whom such notice has been delivered be entitled to officiate therein, he shall cause the notice to be affixed in some conspicuous part of such church.

But if he is not entitled to officiate as a Minister in such church, he shall, at his option, either return the notice to the person who delivered it to him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid.

14. If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving the notice prescribed in section 12, shall forward it to the Marriage Registrar of the district, who shall affix the same to some conspicuous place in his own office.

15. When one of the persons intending marriage is a minor, every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of section 13, send by the post or otherwise a copy of such notice to the Marriage Registrar of the district, or, if there be more than one Registrar of such district, to the Senior Marriage Registrar.

16. The Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such notice, shall affix it to some conspicuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall likewise publish the same in the manner above directed.

18. The certificate mentioned in section 17 shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration (a)—

- (a) that he or she believes that there is not any impediment of kindred or affinity or other lawful hindrance to the said marriage,

Case-law : —(a) Applies only to the belief of the person making it, 16 A. 212.

S. 25 ACT XV OF 1972 (CHRISTIAN MARRIAGE). Marriage (Christian).

and, when either or both of the parties is or are a minor or minors.

(b) that the consent or consents required by law has or have been obtained thereto, or that there is no person resident in India having authority to give such consent, as the case may be.

19. The father, if living, of any minor, or, if the father be dead, the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor's marriage, and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India.

Consent of father, or guardian, or mother.

20. Every person whose consent to a marriage is required under section 19 is hereby authorized to prohibit the issue of the certificate by any Minister, at any time before the issue of the same, by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either of the persons intending marriage, by reason of which he or she is so authorised as aforesaid.

Power to prohibit by notice issue of certificate.

21. If any such notice be received by such Minister, he shall not issue his certificate and shall not solemnize the said marriage until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition, or until the said notice is withdrawn by the person who gave it.

Procedure on receipt of notice.

22. When either of the persons intending marriage is a minor, and the Minister is not satisfied that the consent of the person whose consent to such marriage is required by section 19 has been obtained, such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage.

Issue of certificate in case of minority.

23. When any Native Christian about to be married takes a notice of marriage to a Minister of Religion, or applies for a certificate from such Minister under section 17, such Minister shall, before issuing the certificate, ascertain whether such Native Christian is cognizant of the purport and effect of the said notice or certificate, as the case may be, and, if not, shall translate or cause to be translated the notice or certificate to such Native Christian into some language which he understands.

Issue of certificates to Native Christians.

24. The certificate to be issued by such Minister shall be in the form contained in the second schedule hereto annexed, or to the like effect.

Form of certificate.

25. After the issue of the certificate by the Minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt:

Solemnization of marriage.

Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister.

Marriage (Christian) ACT XV OF 1872 (CHRISTIAN MARRIAGE). S. 26

Certificate void if marriage not solemnized within two months.

26. Whenever a marriage is not solemnized within two months after the date of the certificate issued by such Minister as aforesaid, such certificate and all proceedings (if any) thereon shall be void, and no person shall proceed to solemnize the said marriage until new notice has been given and a certificate thereof issued in manner aforesaid.

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PART VI.

MARRIAGE OF NATIVE CHRISTIANS.

On what conditions marriages of Native Christians may be certified

60. Every marriage between Native Christians applying for a certificate shall, without the preliminary notice required under Part III, be certified under this Part, if the following conditions be fulfilled, and not otherwise:—

- (1) the age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years;
- (2) neither of the persons intending to be married shall have a wife or husband still living;
- (3) in the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other—

“I call upon these persons here present to witness that I, *A.B.*, in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, *C.D.*, to be my lawful wedded wife [*or husband*]” or words to the like effect :

Provided that no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year, unless such consent as is mentioned in section 19 has been given to the intended marriage, or unless it appears that there is no person living authorised to give such consent.

61. When, in respect to any marriage solemnized under this Part, the conditions prescribed in section 60 have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration has been made, shall, on the application of either of the parties to such marriage, and on the payment of a fee of four annas, grant a certificate of the marriage.

The certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed.

62. (1) Every person licensed under section 9 shall keep in English, or in the vernacular language in ordinary use in the district or State in which the marriage was solemnized, and in such form as the Local Government by which he was licensed may from time to time prescribe, a register-book of all marriages solemnized under this Part in his presence, and shall deposit in

Keeping of register-book and deposit of extracts therefrom with Registrar General.

Leg. Changes:—[1] Substituted for the original S. 62 (relating to the keeping and form of the register-book) by Act II of 1891, S. 4 (1).

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the office of the Registrar General of Births, Deaths and Marriages for the territories under the administration of the said Local Government, in such form and at such intervals as that Government may prescribe, true and duly authenticated extracts from his register-book of all entries made therein since the last of those intervals.

(2) Where the person keeping the register-book was licensed as regards a Native State by the Governor General in Council, references in sub-section (1) to the Local Government therein mentioned shall be read as references to the Local Government to whose Registrar General of Births, Deaths and Marriages certified copies of entries in registers of births and deaths are for the time being required to be sent under section 24, sub-section (2), of the Births, Deaths and Marriages Registration Act, 1886.

VI of 1886.

63. Every person licensed under this Act to grant certificates of marriage, and keeping a marriage-register-book under section 62, shall, at all reasonable times, allow search to be made in such book, and shall, on payment of the proper fee, give a copy, certified under his hand, of an entry therein.

Searches in register-book and copies of entries.

64. The provisions of sections 62 and 63, as to the form of the register book, depositing extracts therefrom, allowing searches thereof, and giving copies of the entries therein, shall, *mutatis mutandis*, apply to the books kept under section 37.

Books in which marriages of Native Christians under Part I or Part III are registered.

65. This Part of this Act, except so much of sections 62 and 63 as are referred to in section 64, shall not apply to marriages between Roman Catholics. But nothing herein contained shall invalidate any marriage celebrated between Roman Catholics under the provisions of Part V of Act No. XXV of 1864, ^[1] previous to the twenty-third day of February, 1865.

Part VI not to apply to Roman Catholics Saving of certain marriages.

PART VII.

PENALTIES.

False oath, declaration, notice or certificate for procuring marriage.

[2] 66. Whoever, for the purpose of procuring a marriage or license of marriage, intentionally (a),—

- (a) where an oath or declaration is required by this Act, or by any rule or custom of a Church according to the rites and ceremonies of which a marriage is intended to be solemnized, such Church being the Church of England or of Scotland or of Rome, makes a false oath or declaration, or,
- (b) where a notice or certificate is required by this Act, signs a false notice or certificate,

Leg. Changes:—[1] Repealed by Act V of 1865, which was repealed by this Act. [2] Substituted for the original S. 66 by Act II of 1891, S. 5.

Case law:—(a) Making declaration believed to be true, though in fact false, no offence, 16 A. 212.

Marriage (Christian) ACT XV OF 1872 (CHRISTIAN MARRIAGE). S. 67

shall be deemed to have committed the offence punishable under section 193 of the Indian Penal Code with imprisonment of either description for a term which may extend to three years and, at the discretion of the Court, with fine.

67. Whoever forbids the issue, by a Marriage Registrar, of a certificate, by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such representation to be false, or not having reason to believe it to be true, shall be deemed guilty of the offence described in section 205 of the Indian Penal Code.

Forbidding, by false personation, issue of certificate by Marriage Registrar.

[1] 68. Whoever, not being authorized by section 5 of this Act to solemnize marriages, solemnizes ^(a) or professes to solemnize in the absence of a Marriage Registrar ^(b) of the district in which the ceremony ^(c) takes place, a marriage between persons one or both of whom is or are a Christian ^(d) or Christians, shall be punished ^(e) with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years, and not exceeding ten years,

or, if the offender is an European or American, with penal servitude according to the provisions of Act XXIV of 1855 (*to substitute penal servitude for the punishment of transportation in respect of European and American convicts* * * * [2]),

and shall also be liable to fine.

69. Whoever knowingly ^(f) and wilfully solemnizes a marriage between persons one or both of whom is or are a Christian or Christians, at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses other than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Solemnizing marriage out of proper time, or without witnesses.

This section does not apply to marriages solemnized under special licenses granted by the Anglican Bishop of the Diocese or by his Commissary, nor to marriages performed between the hours of seven in the evening and six in the morning by a Clergyman of the Church of Rome, when he has received the general or special license in that behalf mentioned in section 10.

Saving of marriages solemnized under special license.

Leg. Changes: [1] Substituted for the original S. 68 by Act II of 1891, S. 6. [2] The words "and to amend the law relating to the removal of such convicts" repealed by Act XII of 1891.

Case-law:—(a) —means 'conducts, celebrates or performs,' 20 M. 12; solemnization need not be in Christian form for application of section, 17 M. 391. (b) Presence of—not in civil capacity but as mere relation of a party would not take the case out of section, 14 M. 342 F.S. (c) Marriage before Marriage Registrar requires no—, 20 M. 12. (d) Minor child of deceased—should be presumed to be—, 46 P.W.R. 1916; see, also, 18 M. 280. (e) Parties married by unauthorized persons are guilty of abetment, 20 M. 12. (f) As to the effect of—in this and following sections, see 14 M. 342—1 M.L.J. 468.

S. 72 ACT XV OF 1872 (CHRISTIAN MARRIAGE). Marriage (Christian)

[1] Nor does this section apply to marriages solemnized by a Clergyman of the Church of Scotland according to the rules, rites, ceremonies and customs of the Church of Scotland[1].

70. Any Minister of Religion licensed to solemnize marriages under

Solemnizing, with-
out notice or within
fourteen days after
notice, marriage
with minor.

this Act, who, without a notice in writing, or, when one of the parties to the marriage is a minor, and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under

Part III, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Issuing certificate,
or marrying without
publication of
notice ;

71. A Marriage Registrar under this Act, who commits any of the following offences :—

(1) knowingly and willingly issues any certificate for marriage, or solemnizes any marriage, without publishing the notice of such marriage as directed by this Act ;

[2] (2) after the expiration of two months after the copy of the notice marrying a fter has been entered as required by section 40 in respect expiry of notice ; of any marriage, solemnizes such marriage ;

(3) solemnizes, without any order of a competent Court authorizing him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the district if there be more Marriage Registrars of the district than one, and if he himself be not the Senior

Marriage Registrar ;

issuing certificate
against authorized
prohibition.

(4) issues any certificate the issue of which has been prohibited, as in this Act provided, by any person authorized to prohibit the issue thereof ;

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

Issuing certificate
after expiry of
notice, or, in case of
minor, within four-
teen days after
notice, or against
authorized prohibi-
tion.

72. Any Marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of [3] two months [3] after the notice has been entered by him as aforesaid,

or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a minor, before the expiration of fourteen days after the entry of such notice, or any certificate the issue of which has been forbidden as aforesaid by any person authorized in this behalf,

Leg Changes: [1] Added by Act II of 1891, S. 7 [2] Substituted for the original cl. (2) by Act II of 1891, S. 8 (1). [3] Substituted for "three months" by Act II of 1891, S. 8 (2).

Marriage (Christian) ACT XV OF 1872 (CHRISTIAN MARRIAGE). S. 73

shall be deemed to have committed an offence under section 166 of the Indian Penal Code.

Persons authorized to solemnize marriage (other than a Clergy of Churches of England, Scotland or Rome) :

73. (a) Whoever, being authorized under this Act to solemnize a marriage,

and not being a Clergyman of the Church of England, solemnizing a marriage after due publication of banns, or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf,

or, not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, rites, ceremonies and customs of that church.

or, not being a Clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies and customs of that church.

knowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid, without publishing, or causing to be affixed, the notice (b) of such marriage as directed in Part III of this Act, or after the expiration of two months after the certificate has been issued by him :

issuing certificate, or marrying, without publishing notice, or after expiry of certificate ;
or knowingly and wilfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the district .

issuing certificate authorizedly forbidden ;
or knowingly and wilfully issues any certificate the issue of which has been forbidden, under this Act, by any person authorized to forbid the issue :

solemnizing marriage authorizedly forbidden .
or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same,

shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine.

74. Whoever, not being licensed to grant a certificate of marriage under Part VI of this Act, grants such certificate intending thereby to make it appear that he is so licensed, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

[1] Whoever, being licensed to grant certificates of marriage under Part VI of this Act, without just cause refuses, or wilfully neglects or omits, to perform any of the duties imposed upon him by that Part shall be punished with fine which may extend to one hundred rupees [1].

Leg. Changes :—[1] Added by Act II of 1891, S. 9.

Case-law :—(a) Section is highly penal and must be construed strictly, 19 M. 273.
(b) Solemnization of marriage by episcopally ordained person without—, not punishable, 19 M. 273.

S. 2 ACT III OF 1872 (SPECIAL MARRIAGE). Marriage (Special)

75. Whoever, by himself or another, wilfully destroys or injures any register-book or the counterfoil certificates thereof, or any part thereof, or any authenticated extract therefrom,

or falsely makes or counterfeits any part of such register-book or counterfoil certificates,

or wilfully inserts any false entry in any such register-book or counterfoil certificate or authenticated extract,

shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

76. The prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed.

Limitation of prosecutions under Act.

*

THE SPECIAL MARRIAGE ACT, 1872.

(ACT III OF 1872.)

[Passed on the 22nd March, 1872.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1872	III	Special Marriage	Rep. in part— Act XVI of 1874; Act XII of 1876. Am., Act VI of 1886.

An Act to provide a form of Marriage in certain cases.

WHEREAS it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion, and to legalize certain marriages the validity of which is doubtful; It is hereby enacted as follows:—

Local extent. 1. This Act extends to the whole of British India.

[Commencement.] Rep. Act XVI of 1874.

2. Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindu or the Muhammadan, or the Parsi or the Buddhist, or the Sikh or the Jaina religion, upon the following conditions:—

Conditions upon which marriages under Act may be celebrated.

(1) neither party must, at the time of the marriage, have a husband or wife living:

(2) the man must have completed his age of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar:

(3) each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage :

(4) the parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

1st Proviso.—No such law or custom, other than one relating to consanguinity, or affinity, shall prevent them from marrying.

2nd Proviso.—No law or custom as to consanguinity shall prevent them from marrying, unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than that of great-great-grand-father or great-great-grand-mother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other.

3. The Local Government may appoint one or more Registrars
Appointment of Marriage Registrars. under this Act, either by name or as holding any office for the time being, for any portion of the territory subject to its administration. The officer so appointed shall be called "Registrar of Marriages under Act III of 1872," and is hereinafter referred to as "the Registrar." The portion of territory for which any such officer is appointed shall be deemed his district.

4. When a marriage is intended to be solemnized
One of the parties to intended marriage to give notice to Registrar. under this Act, one of the parties must give notice in writing to the Registrar before whom it is to be solemnized.

The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given.

Such notice may be in the form given in the first schedule to this Act.

5. The Registrar shall file all such notices and keep them with the
Notice to be filed and copy entered in the Marriage Notice Book. records of his office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished to him by the Government, to be called the "Marriage Notice Book under Act III of 1872," and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

6. Fourteen days after notice of an intended marriage has been
Objection to marriage. given under section 4, such marriage may be solemnized, unless it has been previously objected to in the manner hereinafter mentioned.

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clause (1), (2), (3) or (4) of section 2.

The nature of the objection made shall be recorded in writing by the Registrar in the register, and shall, if necessary, be read over and

S. 10 ACT III OF 1872 (SPECIAL MARRIAGE). Marriage (Special)

explained to the person making the objection, and shall be signed by him or on his behalf.

7. On receipt of such notice of objection the Registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, until the lapse of fourteen days from the opening of such Court.

The person objecting to the intended marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree, declaring that such marriage would contravene some one or more of the conditions prescribed in clause (1), (2), (3) or (4) of section 2.

8. The officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed. If such certificate be lodged with the Registrar within fourteen days from the receipt of notice of objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, within fourteen days of the opening of such Court, the marriage shall not be solemnized till the decision of such Court has been given and the period allowed by law for appeals from such decision has elapsed; or, if there be an appeal from such decision, till the decision of the Appellate Court has been given.

If such certificate be not lodged in the manner and within the period prescribed in the last preceding paragraph, or if the decision of the Court be that such marriage would not contravene any one or more of the conditions prescribed in clause (1), (2), (3) or (4) of section 2, such marriage may be solemnized.

If the decision of such Court be that the marriage in question would contravene any one or more of the conditions prescribed in clause (1), (2), (3) or (4) of section 2, the marriage shall not be solemnized.

9. Any Court in which any such suit as is referred to in section 7 is filed may, if it shall appear to it that the objection was not reasonable and *bona fide*, inflict a fine, not exceeding one thousand rupees, on the person objecting, and award it, or any part of it, to the parties to the intended marriage.

10. Before the marriage is solemnized, the parties and three witnesses shall, in the presence of the Registrar, sign a declaration (a) in the form contained in the second schedule to this Act. If either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her father or guardian, except in the case of a widow, and, in every case, it shall be countersigned by the Registrar.

Case-law :—(a) Effect of re-marriage of Hindū widow after—under the Act on her interest in her first husband's estate, 19 C. 289 (F.B.).

11. The marriage shall be solemnized in the presence of the Registrar and of the three witnesses who signed the declaration. It may be solemnized in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, "I, [A], take thee, [B], to be my lawful wife (or husband)."

12. The marriage may be celebrated either at the office of the Registrar or at such other place, within reasonable distance of the office of the Registrar, as the parties desire: Provided that the Local Government may prescribe the conditions under which such marriages may be solemnized at places other than the Registrar's office, and the additional fees to be paid thereupon.

13. When the marriage has been solemnized, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the "Marriage Certificate Book under Act III of 1872," in the form given in the third schedule to this Act, and such certificate shall be signed by the parties to the marriage and the three witnesses.

[1] 13-A. The Registrar shall send to the Registrar General of Births, Deaths and Marriages for the territories within which his district is situate, at such intervals as the Governor General in Council from time to time directs, a true copy certified by him, in such form as the Governor General in Council from time to time prescribes, of all entries made by him in the said marriage-certificate book since the last of such intervals.

14. The Local Government shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act.

The Registrar may, if he think fit, demand payment of any such fee before solemnization of the marriage or performance of any other duty in respect of which it is payable.

The said Marriage Certificate Book shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall on application be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the Local Government for each such extract.

15. Every person who, being at the time married, procures a marriage of himself to be solemnized under this Act, shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code, as the case may be; and the marriage so solemnized is void.

Penalty on married person marrying again under Act.
XLV of 1860.

1st Sch. ACT III OF 1872 (SPECIAL MARRIAGE). Marriage (Special)

16. Every person married under this Act who, during the lifetime of his or her wife or husband, contracts any other marriage, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code for the XLV of 1860, offence of marrying again during the lifetime of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage.

Punishment of bigamy.

17. The Indian Divorce Act shall apply to all marriages contracted under this Act, and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clause (1), (2), (3) or (4) of section 2 of this Act.

Indian Divorce Act to apply.

18. The issue of marriages solemnized under this Act shall, if they marry under this Act, be deemed to be subject to the law to which their fathers were subject as to the prohibition of marriages by reason of consanguinity and affinity, and the provisos to section 2 of this Act shall apply to them.

Law to apply to issue of marriages under Act.

19. Nothing in this Act contained shall affect the validity of any marriage not solemnized under its provisions ; nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage ; but, if the validity of any such mode shall hereafter come into question before any Court, such question shall be decided as if this Act had not been passed.

Saving of marriages solemnized otherwise than under Act.

20. [*Registry of marriages contracted before passing of Act.*] *Rep. Act XII of 1876.*

21. Every person making, signing or attesting any declaration or certificate prescribed by this Act, containing a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of the offence described in section 199 of the Indian Penal Code.

Penalty for signing declarations or certificates containing false statements.

XLV of 1860.

FIRST SCHEDULE.

(See section 4.)

Notice of Marriage.

To _____, a Registrar of Marriages under Act III of 1872 for the District.

I hereby give you notice that a marriage under Act III of 1872 is intended to be had, within three calendar months from the date hereof,

Marriage (Special) ACT III OF 1872 (SPECIAL MARRIAGE). 2nd Sch.

between me and the other party herein named and described (that is to say) :—

Names.	Condition.	Rank or profession.	Age.	Dwelling-place.	Length of residence.
A B	Unmarried Widower.	Landowner.	Of full age.	.....	23 days.
C D	Spinster.	.....	Minor	.....	.....

Witness my hand, this
187 .

(Signed) day of
A.B.

SECOND SCHEDULE.

(See section 10.)

Declaration to be made by the Bridegroom.

I, A B, hereby declare as follows :—

1. I am at the present time unmarried:
2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion :
3. I have completed my age of eighteen years :
4. I am not related to C D [*the bride*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said C D is subject, and subject to the provisos of clause (4) of section 2 of Act III of 1872, render a marriage between us illegal :

[*And when the bridegroom has not completed his age of twenty-one years :*

5. The consent of my father [*or guardian, as the case may be*] has been given to a marriage between myself and C D, and has not been revoked :]

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know, or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) A B [*the bridegroom*].

Declaration to be made by the Bride.

I, C D, hereby declare as follows :—

1. I am at the present time unmarried :
2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion : . . .

4th Sch. ACT III OF 1872 (SPECIAL MARRIAGE). Marriage (Special)

3. I have completed my age of fourteen years :

4. I am not related to *A B* [*the bridegroom*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *A B* is subject, and subject to the provisos of clause (4) of section 2 of Act III of 1872, render a marriage between us illegal :

[*And when the bride has not completed her age of twenty-one years, unless she is a widow :*

(5) The consent of *M N*, my father [*or guardian, as the case may be*], has been given to a marriage between myself and *A B* and has not been revoked :]

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) *C D* [*the bride*].

Signed in our presence by the above-named *A B* and *C D* :

G H,
I J, } [*three witnesses*].
K L,

[*And when the bridegroom or bride has not completed the age of twenty-one years, except in the case of a widow :*

Signed in my presence and with my consent by the above-named *A B* and *C D* :

M N, the father [*or guardian*]
of the above-named *A B* or (*C D*,
as the case may be).]

(Countersigned) *E F*,
Registrar of Marriages under Act III of
1872 for the District of

Dated the day of 18 .

THIRD SCHEDULE.

(See section 13.)

Registrar's Certificate.

I, *E F*, certify that, on the of 18 appeared before me *A B* and *C D*, each of whom in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by Act III of 1872, and that a marriage under the said Act was solemnized between them in my presence.

(Signed) *E F*,
Registrar of Marriages under Act III of
1872 for the District of

(Signed) *A B*,
C D,

G H,
I J, } [*three witnesses*].
K L,

Dated the day of 18 .

FOURTH SCHEDULE.

[*Rep. by Act XII of 1876.*]

THE MARRIAGE VALIDATION ACT, 1892.

(ACT II OF 1892.)

[Passed on the 29th January, 1892.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1892	II	Marriage Validation	Rep. in pt., Act X of 1914.

An Act to validate certain marriages solemnized under Part VI of the Indian Christian Marriage Act, 1872.

XV of 1872. WHEREAS provision is made in Part VI of the Indian Christian Marriage Act, 1872, for the solemnization of marriages between persons of whom both are Native Christians, but not of marriages between persons of whom one only is a Native Christian ;

And whereas persons licensed under section 9 of the said Act have in divers parts of British India, through ignorance of the law, permitted marriages to be solemnized in their presence under the said Part between persons of whom one is a Native Christian and the other is not a Native Christian ;

And whereas it is expedient that such marriages, having been solemnized in good faith, should be validated ; It is hereby enacted as follows :—

1. [1] * * *

2. In this Act the expression " Native Christian " has the same meaning as in the Indian Christian Marriage Act, 1872.
Definition.

XV of 1872.

3. All marriages which have already been solemnized under Part VI of the Indian Christian Marriage Act, 1872, between persons of whom one only was a Native Christian, shall be as good and valid in law as if such marriages had been solemnized between persons of whom both were Native Christians :

XV of 1872.

Provided that nothing in this section shall apply to any marriage which had been judicially declared to be null and void, or to any case where either of the parties has, since the solemnization of such marriage and prior to the commencement of this Act, contracted a valid marriage.

4. Certificates of marriages which are declared by the last foregoing section to be good and valid in law, and register-books, and certified copies of true and duly authenticated extracts therefrom, deposited in compliance with the law for the time being in force, in so far as the register-books and extracts relate to such marriages as aforesaid, shall be received as evidence of such marriages as if such marriages had been solemnized between persons of whom both were Native Christians.

Validation of records of irregular marriages.

Leg. Changes :—[1] Repealed by Act X of 1914.

S. 1 ACT III OF 1874 (MAR. WOMEN'S PROPERTY). Married Women's

Application of Act to marriages under Act V of 1865. 5. References in this Act to the Indian Christian Marriage Act, 1872, shall, so far as may be requisite, XV of 1872. be construed as applying also to the corresponding portions of the Indian Marriage Act, 1865. V of 1865.

6. If any person licensed under section 9 of the said Act to grant certificates of marriage between Native Christians shall at any time after the commencement of this Act solemnize or affect to solemnize any marriage under Part VI of the said Act or grant any such certificate as therein mentioned, knowing that one of the parties to such marriage or affected marriage was at the date of such solemnization not a Christian, he shall be liable to have his license cancelled, and in addition thereto he shall be deemed to have been guilty of an offence prohibited by section 73 of the said Act, and shall be punishable accordingly.

THE MARRIED WOMEN'S PROPERTY ACT, 1874.

(ACT III OF 1874.)

[Passed on the 24th February, 1874.]

HISTORICAL MEMOIR.

Year.	No of Act.	Name of Act.	How affected.
1874	III	Married Women's Property	Rep. in part, Act XII of 1876; VI of 1889; XII of 1891.

An Act to explain and amend the law relating to certain married women, and for other purposes.

WHEREAS it is expedient to make such provision as hereinafter appears for the enjoyment of wages and earnings by women married before the first day of January, 1866; and for insurances on lives by persons married before or after that day:

And whereas by the Indian Succession Act, 1865, section 4, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done, if unmarried:

And whereas by force of the said Act all women to whose marriages it applies are absolute owners of all property vested in, or acquired by, them, and their husbands do not by their marriage acquire any interest in such property, but the said Act does not protect such husbands from liabilities on account of the debts of their wives contracted before marriage, and does not expressly provide for the enforcement of claims by or against such wives: It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act (a) may be called the Married Women's Property Act, 1874.

Case-law:—(a) Applies to persons having English as well as to those having Indian domicile, 4 C. 140; 12 C. 522.

Married Women's ACT III OF 1874 (MAR. WOMEN'S PROPERTY). S. 2

2. It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty.

But nothing herein contained applies to any married woman who at the time of her marriage professed the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions.

And the Governor General in Council may from time to time, by order, either retrospectively from the passing of this Act or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect or tribe, or part of a race, sect or tribe, to whom he may consider it impossible or inexpedient to apply such provisions.

The Governor General in Council may also revoke any such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations under this section shall be published in the Gazette of India.

X of 1865.

The fourth section of the said Indian Succession Act shall not apply, and shall be deemed never to have applied, to any marriage one or both of the parties to which professed at the time of the marriage the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion.

3. [*Rep. by Act XII of 1876.*]

II.—Married Women's Wages and Earnings.

4. The wages and earnings of any married woman acquired or gained by her after the passing of this Act, in any employment, occupation or trade carried on by her and not by her husband,

and also any money or other property so acquired by her through the exercise of any literary, artistic or scientific skill,

and all savings from and investments of such wages, earnings and property,

shall be deemed to be her separate property, and her receipts alone shall be good discharges for such wages, earnings and property.

III.—Insurances by Wives and Husbands.

5. Any married woman may effect a policy of insurance on her own behalf and independently of her husband; and the same and all benefit thereof, if expressed on the face of it to be so effected, shall enure as her separate property, and the contract evidenced by such policy shall be as valid as if made with an unmarried woman.

6. A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.

S. 2 ACT II OF 1889 (MEASURES OF LENGTH). **Measures of Length**

When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the Presidency in which the office at which the insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court, under Act No. XVII of 1864 (*to constitute an Office of Official Trustee*), section 10.

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors.

IV.—Legal Proceedings by and against Married Women.

7. A married woman may maintain a suit in her own name for the recovery of property of any description which by force of the said Indian Succession Act, 1865, or of this Act, X of 1865, is her separate property; and she shall have, in her own name, the same remedies, both civil and criminal, against all persons ^(a), for the protection and security of such property, as if she were unmarried, and she shall be liable to such suits, processes and orders in respect of such property as she would be liable to if she were unmarried.

* * * * *

THE MEASURES OF LENGTH ACT, 1889.

(ACT II OF 1889.)

[Passed on the 15th February, 1889.]

An Act to declare the imperial standard yard for the United Kingdom to be the legal standard measure of length in British India.

WHEREAS it is expedient to declare the imperial standard yard for the United Kingdom to be the legal standard measure of length in British India: It is hereby enacted as follows:—

Title, extent and commencement. 1. (1) This Act may be called the Measures of Length Act, 1889.

(2) It extends to the whole of British India; and

(3) It shall come into force on such day as the Governor General in Council may appoint in this behalf.

2. The imperial standard yard for the United Kingdom shall be the legal standard measure of length in British India, and be called the standard yard.

Case-law :—(a) Includes her husband, 1 C. 285; section extends to separate property subject to restraint upon anticipation, 12 C. 522.

Measures of Length ACT II OF 1889 (MEASURES OF LENGTH). S. 3

3. A copy, approved by the Governor General in Council, of the imperial standard for determining the length of the imperial standard yard for the United Kingdom shall be kept in such place within the limits of the Town of Calcutta as the Governor General in Council may prescribe, and shall be the standard for determining the length of the standard yard.

Standard foot and inch.

4. One-third part of the standard yard shall be called a standard foot, and one thirty-sixth part of such a yard shall be called a standard inch.

5. Any measure having stamped thereon or affixed thereto a certificate purporting to be made under the authority of the Governor General in Council or of a Local Government, and stating that the measure is of the length of the standard yard or that a measure marked thereon as a foot or inch is of the length of the standard foot or standard inch, as the case may be, shall, when produced before any Court by any public servant having charge of the measure in pursuance of any direction published in an official Gazette by order of the Governor General in Council or the Local Government, or by any person acting under the general or special authority of such a public servant, be deemed to be correct until its inaccuracy is proved.

6. A public servant having in pursuance of such a direction charge of such a measure as is mentioned in the last foregoing section shall allow any person to inspect it free of charge at all reasonable times and to compare therewith or with any measure marked thereon any measure which such person may have in his possession.

7. There shall be kept by the Commissioner of Police in the Town of Calcutta under section 55 of the Calcutta Police Act, 1866, by the Commissioners in Calcutta under section 370 of the Calcutta Municipal Consolidation Act, 1888, by the Commissioner of Police in the City of Madras under section 32 of the Madras City Police Act, 1888, by the Municipal Commissioner in the City of Bombay under section 418 of the City of Bombay Municipal Act, 1888, and by the District Magistrate under section 20 of Regulation XII of 1827 of the Bombay Code, such certified measures of the standard yard, standard foot and standard inch as are mentioned in section 5.

Ben. Act IV of 1866.

Ben. Act II of 1888

Mad. Act III of 1888

Bom. Act III of 1888.

Certified measures to be kept by authorities required by existing enactments to keep measures of length.

S. 6

ACT VII OF 1916 (MEDICAL DEGREES). Medical Degrees

THE MEDICAL DEGREES ACT, 1916.

(ACT VII OF 1916.)

[Passed on the 16th March, 1916.]

An Act to regulate the grant of titles implying qualifications in western medical science, and the assumption and use by unqualified persons of such titles.

WHEREAS it is expedient to regulate the grant of titles implying qualifications in western medical science, and the assumption and use by unqualified persons of such titles; It is hereby enacted as follows:—

Short title. 1. This Act may be called the Indian Medical Degrees Act, 1916.

2. In this Act "western medical science" means the western methods of Allopathic medicine, Obstetrics and Surgery, but does not include the Homœopathic or Ayurvedic or Unani system of medicine.

3. The right of conferring, granting, or issuing in British India degrees, diplomas, licenses, certificates or other documents stating or implying that the holder, grantee or recipient thereof is qualified to practise western medical science, shall be exercisable only by the authorities specified in the Schedule and by such other authority as the Governor General in Council may, by notification in the Gazette of India, and subject to such conditions and restrictions as he thinks fit to impose, authorize in this behalf.

4. Save as provided by section 3, no person in British India shall confer, grant, or issue, or hold himself out as entitled to confer, grant, or issue any degree, diploma, license, certificate or other document stating or implying that the holder, grantee or recipient is qualified to practise western medical science.

5. Whoever contravenes the provisions of section 4 shall be punishable with fine which may extend to one thousand rupees; and if the person so contravening is an association, every member of such association, who knowingly and wilfully authorises or permits the contravention, shall be punishable with fine which may extend to five hundred rupees.

6. Whoever voluntarily and falsely assumes, or uses any title or description or any addition to his name implying that he holds a degree, diploma, license or certificate conferred, granted or issued by any authority referred to in section 3, or recognized by the General Council of Medical Education of the United Kingdom, or that he is qualified to practise western medical science shall be punishable with fine which may extend to two hundred and fifty rupees, or, if he subsequently commits, and is convicted of, an offence punishable under this section, with fine which may extend to five hundred rupees :

Provided that nothing in this section shall apply to the use by any person of any title, description, or addition which, prior to the commence-

ment of this Act, he used in virtue of any degree, diploma, license or certificate conferred upon, or granted or issued to him.

7. No Court shall take cognizance of an offence punishable under this Act, except upon complaint made by order of the
Cognizance of Local Government, or upon complaint made, with the
offences. previous sanction of the Local Government, by a
Council of Medical Registration established by any enactment for the
time being in force in the province.

8. No Court inferior to that of a Presidency
Jurisdiction of Magistrate or a Magistrate of the first class shall try
Magistrates. any offence punishable under this Act.

SCHEDULE

(See section 3.)

1. Every University established by an Act of the Governor General in Council.
2. The State Medical Faculty in Bengal.
3. The College of Physicians and Surgeons of Bombay.
4. The Board of Examiners, Medical College, Madras.

THE INDIAN MERCHANDISE MARKS ACT, 1889.

(Act IV of 1889.)

[Passed on the 1st March, 1889.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1889	IV	Merchandise Marks	Rep. in pt. and Am., Act IX of 1891; Act XVI of 1904.

An Act to amend the Law relating to Fraudulent Marks on Merchandise.

WHEREAS it is expedient to amend the law relating to fraudulent marks on merchandise; It is hereby enacted as follows :—

Title, extent and commencement. 1. (1) This Act may be called the Indian Merchandise Marks Act, 1889.

(2) It extends to the whole of British India; * * * [1]

(3) It shall come into force on the first day of April, 1889.

Definitions. 2. In this Act, unless there is something repugnant in the subject or context,—

(1) "trade mark" (a) has the meaning assigned to that expression in section 478 of the Indian Penal Code as amended by this Act :

Leg. Changes :—[1] Repealed by Act IX of 1891.

Case-law :—(a) 27 C. 776; requisites of—, 40 C 481; distinguished from trade name, *ibid*; design covering whole body of goods and forming part thereof is not a— or trade description, 8 S.L.R. 39=25 Ind. Cas. 998.

- (2) "trade description" (a) means any description, statement or other indication, direct or indirect,—
- (a) as to the number, quantity, measure, gauge or weight of any goods, or
 - (b) as to the place or country in which, or the time at which, any goods were made or produced, or
 - (c) as to the mode of manufacturing or producing any goods, or
 - (d) as to the material of which any goods are composed, or
 - (e) as to any goods being the subject of an existing patent, privilege or copyright;
- and the use of any numeral, word or mark which according to the custom of the trade is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Act :
- (3) "false trade description" (b) means a trade description which is untrue in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description untrue in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act :
- (4) "goods" (c) means anything which is the subject of trade or manufacture : and
- (5) "name" includes any abbreviation of a name.

Amendment of the Indian Penal Code.

Substitution of new sections for sections 478 to 489 of the Indian Penal Code.

3. For that part of Chapter XVIII of the Indian XLV of 1860. Penal Code which relates to Trade and Property Marks, the following shall be substituted, namely :—

"Of Trade, Property and Other Marks.

"478. (d) A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade mark, and for the purposes of this Code the expression 'trade mark' includes any trade mark which is registered in the register of trade marks kept under the Patents, Designs and Trade Marks Act, 1883, and any trade mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable. ^{46 & 47 Vict., c. 57.}

Case-law :—(a) See note (a) on p. 734, *supra*. (b) Does not include unauthorized edition of book published in same mode as authorized edition, 26 B. 289. (c) Includes books, 26 C. 294 ; 17 M.L.J. 490. (d) Definition not elastic enough to protect rights of authors of books, 26 B. 289 ; as to acquisition of property in trade mark, see 15 M.L.J. 45 (F.B.).

Property mark. "479. A mark used for denoting that moveable property belongs to a particular person is called a property mark.

Using a false trade mark. "480. Whoever marks any goods or any case, package or other receptacle containing goods, or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade mark.

Using a false property mark. "481. Whoever marks any moveable property or goods or any case, package or other receptacle containing moveable property or goods, or uses any case, package or other receptacle having any mark thereon in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

Punishment for using a false trade mark or property mark. "482. Whoever (a) uses any false trade mark or any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Counterfeiting a trade mark or property mark used by another. "483. Whoever counterfeits any trade mark or property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Counterfeiting a mark used by a public servant. "484. Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place or that the property is of a particular quality or has passed through a particular office or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Making or possession of any instrument for counterfeiting a trade mark or property mark. "485. Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, or has in his possession a trade mark or property mark, for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Case-law :—(a) Refers not only to individuals but also to corporations, 7 Bur. L. T. 116=23 Ind. Cas. 689,

" 486. Whoever ^(a) sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark or property mark affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves—

Selling goods marked with a counterfeit trade mark or property mark.

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark. and

(b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

" 487. Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Making a false mark upon any receptacle containing goods.

" 488. Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

Punishment for making use of any such false mark.

" 489. Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

Tampering with property mark with intent to cause injury.

Trade Descriptions.

4 (1) The provisions of this Act respecting the application of a false trade description to goods or respecting goods to which a false trade description is applied, shall extend to the application to goods of any such numerals, words or marks, or arrangement or combination thereof, whether including a trade mark or not, as are or is reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture

Provisions supplemental to the definition of false trade description.

Case-law:—(a) Refers not only to individuals but also to corporations, 7 Bur. L.T. 116—23 Ind. Cas. 689.

or merchandise they really are, and to goods having such numerals, words or marks, or arrangement or combination, applied thereto.

(2) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means as applied to any goods any name or initials—

- (a) not being a trade mark, or part of a trade mark, and
- (b) being identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description and not having authorized the use of such name or initials.

(3) A trade description which denotes or implies that there are contained in any goods to which it is applied more yards, feet or inches than there are contained therein standard yards, standard feet or standard inches is a false trade description.

Application of trade descriptions. 5.(a) (1) A person shall be deemed to apply a trade description to goods who—

- (a) applies it to the goods themselves, or
- (b) applies it to any covering label, reel or other thing in or with which the goods are sold or are exposed or had in possession for sale or any purpose of trade or manufacture, or
- (c) places, encloses or annexes any goods which are sold, or are exposed or had in possession for sale or any purpose of trade or manufacture, in, with or to any covering, label, reel or other thing to which a trade description has been applied, or
- (d) uses a trade description in any manner reasonably calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade description.

(2) A trade description shall be deemed to be applied whether it is woven, impressed or otherwise worked into or annexed or affixed to the goods or any covering, label, reel or other thing.

(3) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper, and the expression "label" includes any band or ticket.

6.(b) If a person applies a false trade description (c) to goods, he (d) shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be punished with imprisonment for a term which may extend to three months or with fine which may extend

Penalty for applying a false trade description.

Case-law :—(a) Improper use of trade-name may fall within section, 40 C. 281. (b) Criminal proceedings not to be instituted if dispute can be satisfactorily settled in Civil Court, 40 C. 281. (c) See 23 C. 174; unauthorized edition of book exactly similar to authorized edition, no infringement of trade—, 26 B. 289; improper use of trade-name may fall under S. 6 or S. 7, 40 C. 281; as to right of a person to appropriate name suggested by trade, see 31 C. 411. (d) Includes 'she' and 'it,' 7 Bur. L.T. 116—23 Ind. Cas. 689.

to two hundred rupees, and in the case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

Penalty for selling goods to which a false trade description is applied.

7. (a) If a person sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, he (b) shall, unless he proves—

- (a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade description, and
- (b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or
- (c) that otherwise he had acted innocently,

he punished with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees, and in case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

Unintentional Contravention of the Law relating to Marks and Descriptions.

8. Where a person is accused under section 482 of the Indian Penal Code of using a false trade mark or property mark by XLV of 1860.

Unintentional contravention of the law relating to marks and descriptions.

reason of his having applied a mark to any goods, property or receptacle in the manner mentioned in section 480 or section 481 of that Code, as the case may be, or under section 6 of this Act of applying to goods any false trade description, or under section 485

of the Indian Penal Code of making any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, and proves—

- (a) that in the ordinary course of his business he is employed, on behalf of other persons, to apply trade marks or property marks, or trade descriptions, or, as the case may be, to make dies, plates or other instruments for making, or being used in making, trade marks or property marks, and that in the case which is the subject of the charge he was so employed and was not interested in the goods or other thing by way of profit or commission dependent on the sale thereof, and
- (b) that he took reasonable precautions against committing the offence charged, and
- (c) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark or description, and
- (d) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the mark or description was applied,

he shall be acquitted.

Case-law:—(a) See 23 C. 174; as to requisites for conviction, see 32 P.R. 1902, Cr. (b) Includes 'she' and 'it,' 7 Bur. L.T. 116=23 Ind. Cas. 689.

Forfeiture of Goods.

XLV of 1860. 9. (1) When a person is convicted under section 482 of the Indian Penal Code of using a false trade mark, or under section 486 of that Code of selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark applied thereto, or under section 487 or section 488 of that Code of making, or making use of, a false mark, or under section 6 or section 7 of this Act of applying a false trade description to goods, or of selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, or is acquitted on proof of the matter or matters specified in section 486 of the Indian Penal Code or section 7 or section 8 of this Act, the Court convicting or acquitting him may direct the forfeiture to Her Majesty of all goods and things by means of, or in relation to, which the offence has been committed or, but for such proof as aforesaid, would have been committed.

(2) When a forfeiture is directed on a conviction and an appeal lies against the conviction, an appeal shall lie against the forfeiture also.

(3) When a forfeiture is directed on an acquittal and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the Court to which in appealable cases appeals lie from sentences of the Court which directed the forfeiture.

Amendment of the Sea Customs Act, 1878.

VIII of 1878. Amendment of section 18, Act VIII of 1878. 10. (1) For clause (d) of section 18 of the Sea Customs Act, 1878, the following shall be substituted, namely :—

XLV of 1860. “(d) goods having applied thereto a counterfeit trade mark within the meaning of the Indian Penal Code, or a false trade description within the meaning of the Indian Merchandise Marks Act, 1889 ;

IV of 1889.

(e) goods made or produced beyond the limits of the United Kingdom and British India and having applied thereto any name or trade mark being, or purporting to be, [1] * * * the name or trade mark of any person who is a manufacturer, dealer or trader in the United Kingdom or in British India unless—

(i) the name or trade mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of the United Kingdom and British India, and

(ii) [2] the country in which that place is situated is [3] in that indication indicated in letters as large and conspicuous as any letter in the name or trade mark, and in the same language and character as the name or trade mark.”

Leg. Changes :—[1] Repealed by Act XVI of 1904. [2] Substituted by Act IX of 1891.

(2) To section 18 of the Sea Customs Act, 1878, as amended by sub- VIII of 1878. section (1), the following shall be added, namely :—

" (f) piece-goods, such as are ordinarily sold by length or by the piece, which—

(i) have not conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece, and

(ii) have been manufactured beyond the limits of India, or,

(iii) having been manufactured within those limits have been manufactured beyond the limits of British India in premises which, if they were in British India, would be a factory as defined in the Indian Factories Act, 1881." XV of 1881;

Addition of a
section after section
19, Act VIII of
1878.

11. The following shall be added after section 19 of the Sea Customs Act, 1878, namely :—

VIII of 1878.

" 19-A. (1) Before detaining any such goods as are or may be specified in or under section 18 or section 19, as the case may be, or taking any further proceedings with a view to the confiscation thereof under this Act, the Chief Customs officer^(a) or other officer appointed by the Local Government in this behalf may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with and may satisfy himself in accordance with those regulations that the goods are such as are prohibited to be imported.

(2) The Governor General in Council may make regulations, either general or special, respecting the detention and confiscation of goods the importation of which is prohibited, and the conditions, if any, to be fulfilled before such detention and confiscation, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section and the mode of verification of such evidence.

(3) Where there is on any goods a name which is identical with, or a colourable imitation of, the name of a place in the United Kingdom or British India, that name, unless accompanied in equally large and conspicuous letters, and in the same language and character, by the name of the country in which such place is situate, shall be treated for the purposes of sections 18 and 19 as if it were the name of a place in the United Kingdom or British India.

(4) Such regulations may apply to all goods the importation of which is prohibited by section 18 or under section 19, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.

(5) The regulations may provide for the informant reimbursing any public officer and the Secretary of State for India in Council all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

Case-law:—(a) Inquiry of—under section must be of a very limited character, 10 C.W.N. 107 = 4 C.L.J. 268.

(6) All regulations under this section shall be published in the Gazette of India and in the Calcutta, Fort St. George, Bombay and Burma Gazettes."

Stamping of Length of Piece-goods manufactured in British India.

XV of 1881. **Stamping of length of piece-goods manufactured in British India.** 12. (1) Piece-goods, such as are ordinarily sold by length or by the piece, which have been manufactured in premises which are a factory as defined in the Indian Factories Act, 1881, shall not be removed from those premises without having conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece.

(2) If any person removes or attempts to remove any such piece-goods from any such premises without the length of each piece being stamped in the manner mentioned in sub-section (1), every such piece, and everything used for the packing or removal thereof, shall be forfeited to Her Majesty, and such person shall be punished with fine which may extend to one thousand rupees.

Supplemental Provisions.

VII of 1878. **Evidence of origin of goods imported by sea.** 13. In the case of goods brought into British India by sea, evidence of the port of shipment shall, in a prosecution for an offence against this Act or section 18 of the Sea Customs Act, 1878, as amended by this Act, be *prima facie* evidence of the place or country in which the goods were made or produced.

XLV of 1860. **Costs of defence or prosecution.** 14. (1) On any such prosecution as is mentioned in the last foregoing section, or on any prosecution for an offence against any of the sections of the Indian Penal Code as amended by this Act, which relate to trade, property and other marks, the Court may order costs^(a) to be paid to the defendant by the prosecutor or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

(2) Such costs shall, on application to the Court, be recoverable as if they were a fine.

Limitation of prosecution. 15. No such prosecution as is mentioned in the last foregoing section shall be commenced^(b) after the expiration of three years next after the commission of the offence, or one year after the first discovery thereof by the prosecutor, whichever expiration first happens.

Authority of the Governor General in Council to issue instructions as to administration of this Act. 16. (1) The Governor General in Council may, by notification in the Gazette of India and in local official Gazettes, issue instructions for observance by Criminal Courts in giving effect to any of the provisions of this Act.

Case-law :—(a) Appellate Court can award—of appeal under section, 16 Bom. L.R. 78. (b) In case of series of infringements, time runs from date of first infringement, 4 Bur. L.T. 89=10 Ind. Cas. 787; 22 M. 288; 10 S.L.R. 45=36 Ind. Cas. 571; 36 Ind. Cas. 168; omission to prosecute within time no bar to civil suit for injunction, 22 M. 288.

(2) Instructions under sub-section (1) may provide, among other matters, for the limits of variation, as regards number, quantity, measure, gauge or weight, which are to be recognized by Criminal Courts as permissible in the case of any goods.

17. On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied, the seller shall be deemed to warrant that the mark is a genuine mark and not counterfeit or falsely used, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the seller and delivered at the time of the sale or contract to and accepted by the buyer.

Implied warranty
on sale of marked
goods.

18. (1) Nothing in this Act shall exempt any person from any suit or other proceeding which might, but for anything in this Act, be brought against him.

Savings.

(2) Nothing in this Act shall entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any suit or other proceeding, but such discovery or answer shall not be admissible in evidence against such person in any such prosecution as is mentioned in section 14.

(3) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in British India who in good faith acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

[1] 19. (a) For the purposes of section 12 of this Act and clause (f) of section 18 of the Sea Customs Act, 1878, as amended by this Act, the Governor General in Council may, by notification in the Gazette of India, declare what classes of goods are included in the expression 'piece-goods, such as are ordinarily sold by length or by the piece.'

Definition
of
piece-goods.

[1] 20. (1) The Governor General in Council may make rules, for the purposes of this Act, to provide, with respect to any goods which purport or are alleged to be of uniform number, quantity, measure, gauge or weight, for the number of samples to be selected and tested and for the selection of the samples.

Determination of
character of goods
by sampling.

(2) With respect to any goods for the selection and testing of samples of which provision is not made in any rules for the time being in

Leg. Changes:—[1] The old section 19 was repealed and the present sections 19, 20, 21 and 22 were added by Act IX of 1891. The old section 19 ran as follows:—

"19. *Date of commencement of this Act as regards unstamped piece-goods.*—The prohibition of bringing into British India of such piece-goods as are described in clause (f) of section 18 of the Sea-Customs Act, 1878, as amended by this Act, shall not take effect till the first day of August, 1889, and the provisions of section 12, as regards piece-goods made up in bales in factory before the first day of April, 1889, remain in abeyance till the first day of July, 1889."

Case-law:—(a) 10 C.W.N. 107—4 C.L.J. 208.

force under sub-section (1), the Court or officer of customs, as the case may be, having occasion to ascertain the number, quantity, measure, gauge or weight of the goods, shall, by order in writing, determine the number of samples to be selected and tested and the manner in which the samples are to be selected.

(3) The average of the results of the testing in pursuance of rules under sub-section (1) or of an order under sub-section (2) shall be *prima facie* evidence of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

(4) If a person having any claim to, or in relation to, any goods of which samples have been selected and tested in pursuance of rules under sub-section (1) or of an order under sub-section (2) desires that any further samples of the goods be selected and tested, they shall, on his written application and on the payment in advance by him to the Court or officer of customs, as the case may be, of such sums for defraying the cost of the further selection and testing as the Court or officer may from time to time require, be selected and tested to such extent as may be permitted by rules to be made by the Governor General in Council in this behalf or as, in the case of goods with respect to which provision is not made in such rules the Court or officer of customs may determine in the circumstances to be reasonable, the samples being selected in manner prescribed under sub-section (1), or in sub-section (2), as the case may be.

(5) The average of the results of the testing referred to in sub-section (3) and of the further testing under sub-section (4) shall be conclusive proof of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

(6) Rules under this section shall be made after previous publication.

[1] 21. An officer of the Government whose duty it is to take part in the enforcement of this Act shall not be compelled in any Court to say whence he got any information as to the commission of any offence against this Act.

[1] 22. If any person, being within British India, abets the commission, without British India, of any act which, if committed in British India, would under this Act, or under any section of that part of Chapter XVIII of the Indian Penal Code which relates to trade, property and other marks, be an offence, he may be tried for such abetment in any place in British India in which he may be found, and be punished therefor with the punishment to which he would be liable if he had himself committed in that place the act which he abetted.

Information as to
commission of
offences.

Punishment of
abetment in India
of acts done out of
India.

XLV of 1860.

THE INDIAN MERCHANT SEAMEN ACT, 1859.

(ACT I OF 1859.)

[Passed on the 25th January, 1859.]

HISTORICAL MEMOIR.

Year.	No of Act.	Name of Act.	How affected.
1859	I	Indian Merchant Seamen ...	Rep. in pt., Act XV of 1863. " Act XIV of 1870. " Act XVI of 1874. " Act IV of 1875. " Act XII of 1876. " Act X of 1914. Am., Act XIII of 1876. " Act V of 1883. " Act VI of 1891. " Act XII of 1891. " Act VI of 1906.

An Act for the amendment of the law relating to Merchant Seamen.

WHEREAS the law for the registry of seamen and the grant of register tickets has been found to be ineffective for the purposes intended; and whereas by section 288 of an Act of the Imperial Parliament called "The Merchant Shipping Act, 17 & 18 Vict., 1854"^(a), it is enacted that, "if the Governor General of India in Council, or the respective legislative authorities in any British possession abroad, by any Acts, Ordinances, or other appropriate legal means, apply or adapt any of the provisions in the third part of this Act contained to any British ships registered at, trading with, or being at any place within their respective jurisdictions, and to the owners, masters, mates, and crews thereof, such provisions, when so applied and adapted as aforesaid, and as long as they remain in force, shall in respect of the ships and persons to which the same are applied be enforced, and penalties and punishments for the breach thereof shall be recovered and inflicted throughout Her Majesty's dominions, in the same manner as if such provisions had been hereby so adapted and applied, and such penalties and punishments had been hereby expressly imposed";

And whereas it is expedient to discontinue the practice of registry and the grant of register tickets, and to apply to ships registered at, trading with, or being at any port or place in India, certain provisions of the third part of the said Act with such adaptations and modifications as are required, and for the purposes aforesaid to repeal the laws now in force in India relating to merchant seamen;

It is enacted as follows:—

1. [Repeal of Acts.] Rep. by the Repealing Act, 1870 (XIV of 1870).

SHIPPING OFFICES.

2. A shipping office shall be established at each of the ports of Calcutta, Madras and Bombay, and at such other Shipping offices. ports as the Governor General of India in Council

Case-law —(a) Does not apply to British India, 8 M.H.C. 85.

shall hereafter deem necessary. For every such office there shall be a superintendent, to be called a "shipping-master," with such necessary deputies, clerks, and servants, at such salaries, and subject to such regulations, as the Local Government shall, from time to time, with the sanction of the Governor General of India in Council, direct and appoint.

Every act done by or before any deputy duly appointed shall have the same effect as if done by or before a shipping-master.

3. The Local Government shall have power to appoint and remove such shipping-masters and deputies, who shall respectively be subject to the control of that Government or of any intermediate authority which it may appoint.

Appointment, etc., of shipping-masters and deputies.

4. It shall be the general business of shipping-masters appointed under this Act, to superintend and facilitate the engagement and discharge of seamen in manner hereinafter mentioned, to provide means for securing the presence on board at the proper times of men who are so engaged, and to perform such other duties relating to merchant seamen and merchant ships as are hereby or under the said Merchant Shipping Act, 1854, or as may hereafter, under the powers herein contained, be committed to them. It shall also be the duty of shipping-masters to give to all persons desirous of apprenticing boys to the sea-service, and duly authorized so to do by Act XIX of 1850 (*concerning the binding of apprentices*) and also to masters and owners of ships requiring apprentices, such assistance as may be in their power for facilitating the making of such apprenticeships.

Business of shipping-masters.

17 & 18 Vict.,
c. 104.

5. Such fees, not exceeding the sums specified in the table marked (A) in the schedule to this Act, as are from time to time fixed by the Local Government, shall be payable upon all engagements and discharges effected before shipping-masters as hereinafter mentioned. Scales of the fees payable for the time being shall be conspicuously placed in the shipping offices; and all shipping-masters, their deputies, clerks, and servants, may refuse to proceed with any engagement unless the fees payable thereon are first paid.

Fees to be paid upon engagements and discharges.

6. Every owner or master of a ship engaging or discharging any seaman in a shipping office or before a shipping-master, shall pay to the shipping-master the whole of the fees hereby made payable in respect of such engagement or discharge, and may, for the purpose of in part reimbursing himself, deduct in respect of each such engagement or discharge from the wages of all persons (except apprentices) so engaged or discharged, and retain, any sums not exceeding the sums specified in that behalf in the table marked (B) in the schedule hereto:

Fees by whom to be paid, etc.

Provided that, if in any cases the sums which the owner is so entitled to deduct, exceed the amount of the fee payable by him, such excess shall be paid by him to the shipping-master in addition to such fee.

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7. Any shipping-master, deputy shipping-master, or any clerk or servant in any shipping office, who demands or receives any remuneration whatever, either directly or indirectly, for hiring or supplying any seaman for any merchant ship, excepting the lawful fees payable under this Act, shall for every such offence incur a penalty not exceeding two hundred rupees, and shall also be dismissed from his office.

Penalty on shipping-master taking other remuneration.

8. The Local Government may direct that, at any place at which no separate shipping office is established, the whole or any part of the business of the shipping office shall be conducted at the custom-house, or at the office of the master-attendant or harbour-master, or at such other office as the Government shall direct, and thereupon the same shall be there conducted accordingly; and in respect of such business such custom-house or office as aforesaid shall for all purposes be deemed to be a shipping office, and the officer of customs or other officer there, to whom such business is committed, shall for all purposes be deemed to be a shipping-master within the meaning of this Act.

Business of shipping office may be transacted at custom-house or elsewhere.

EXAMINATIONS AND CERTIFICATES OF MASTERS AND MATES.

9. Examinations shall be instituted for persons who intend to become masters or mates of foreign-going ships or of home-trade ships of a burden exceeding three hundred tons, or who wish to procure certificates of competency hereinafter mentioned.

Examinations.

10. The Local Government or any Board or officer duly authorized by the Local Government in that behalf shall from time to time nominate two or more competent persons for the purpose of examining the qualifications of the applicants for examination. The Local Government the sanction of the Governor General of India in Council, make rules for the conduct of such examinations and as to the qualifications to be required; and such rules shall be strictly adhered to by all examiners. **[1]** Fees at such rates as the Local Government may, from time to time, with the previous sanction of the Governor General in Council, fix in this behalf, shall be paid by all applicants for examination. **[1]**

Local Government to appoint examiners.

ment may, with

Rules for conduct of examination.

examiners.

Fees.

11. The Local Government or such Board or officer as aforesaid shall deliver to every applicant who is reported by the examiners to have passed the examination satisfactorily, and to have given satisfactory evidence of his sobriety, experience, ability, and general good conduct on boardship, a certificate (hereinafter called a "certificate of competency") to the effect that he is competent to act as master or mate of a foreign-going ship or of a home-trade ship of a burden exceeding three hundred tons, as the case may be:

Certificates of competency.

Leg. Changes :—[1] Substituted by Act V of 1883, S. 34.

[1] Provided that the Local Government may, in any case in which it has reason to believe that such report has been unduly made, require, before granting a certificate, a re-examination of the applicant or a further inquiry into his testimonials and character[1].

12. Certificates of service differing in form from certificates of competency shall be granted as follows (that is to say)—

(1) Every person who before the passing of this Act has served as master in the British merchant service or as master of any foreign-going ship registered under Act X of 1841, or who has attained or shall attain the rank of lieutenant, master, passed mate, or second mate, [2] or any corresponding or higher rank in the service of Her Majesty, or the rank of commander or first grade officer in the Indian Marine Service [3] shall be entitled to a certificate of service as master for foreign-going ships.

(2) Every person who before the passing of this Act has served as mate in the British merchant service or as mate of any such ship as aforesaid [3] or who has attained or shall attain the rank of second grade officer in the Indian Marine Service[3] shall be entitled to a certificate of service as mate for foreign-going ships.

(3) Every person who before the passing of this Act has served as master or mate of a home-trade ship of a burden exceeding three hundred tons, shall be entitled to a certificate of service as master or mate (according to such previous service) for such home-trade ships.

And each of such certificates of service shall contain particulars of the name and of the length and nature of the previous service of the person to whom it is delivered; and the Local Government or such other authority as aforesaid shall deliver such certificates of service to the various persons so respectively entitled thereto upon their proving themselves to have attained such rank or to have served as aforesaid, and upon their giving a full and satisfactory account of the particulars aforesaid.

13. No foreign-going ship or home-trade ship of a burden exceeding three hundred tons shall go to sea from any port in India unless the master and one officer besides the master have obtained and possess valid and appropriate certificates either of competency or service under this Act or under the Merchant Shipping Act, 1854; and whoever, having been engaged to serve as master or mate, goes to sea as aforesaid as such master or mate without being at the time entitled to and possessed of such a certificate as hereinbefore required, and whoever employs any person as such master or mate without ascertaining that he is at the time entitled to and possessed of such certificate, shall for each such offence be liable to a penalty of five hundred rupees.

14. Every certificate of competency for a foreign-going ship shall be deemed to be of a higher grade than the corresponding certificate for a home-trade ship, and shall entitle the lawful holder thereof to go to sea in the corresponding grade in such last-mentioned ship; but no certificate

Leg. Changes:—[1] Inserted by Act V of 1888, S. 35. [2] Substituted by Act VI of 1891, S. 1 (1). [3] Inserted by Act VI of 1891, S. 1 (2).

S. 19 **ACT I OF 1859 (MERCHANT SEAMEN). Merchant Seamen**

for a home-trade ship shall entitle the holder to go to sea as master or mate of a foreign-going ship.

15. All certificates, whether of competency or service, shall be made in duplicate; and one part shall be delivered to the person entitled to the certificate, and the other shall be kept and recorded as the Local Government shall direct. A note of all orders made for cancelling, suspending, altering, or otherwise affecting any certificate in pursuance of the powers herein contained, shall be entered in the record of certificates.

Record of grants, cancellations, etc., of certificates.

16. Whenever any master or mate proves to the satisfaction of the Local Government or such other authority as aforesaid that he has, without fault on his part, lost or been deprived of any certificate already granted to him, a copy of the certificate to which by the record so kept as aforesaid he appears to be entitled shall be delivered to him, and shall have all the effect of the original.

Loss of certificate.

17. [*Exemption from sections IX to XVI of certain ships registered under Act X of 1841.*] Rep. by Act XV of 1863.

ENGAGEMENT OF SEAMEN.

18. The Local Government, or any Board or officer duly authorized by the Local Government in that behalf, may grant to such persons as may be deemed fit, licenses to engage or supply seamen for merchant ships, to continue for such periods, to be upon such terms, and to be revocable upon such conditions as the Government thinks proper.

Licenses to procure seamen.

19. The following offences shall be punishable as hereinafter mentioned (that is to say)—

Penalties.

(1) If any person not licensed as aforesaid, other than the owner or master or mate of the ship, or some person who is *bona fide* the servant and in the constant employ of the owner, or a shipping-master duly appointed as aforesaid, engages or supplies any seaman to be entered on board any ship, he shall for each seaman so engaged or supplied incur a penalty not exceeding one hundred rupees.

For supplying seamen without license.

(2) If any person employs any unlicensed person other than persons so excepted as aforesaid, for the purpose of engaging or supplying any seaman to be entered on board any ship, he shall for each seaman so engaged or supplied incur a penalty not exceeding one hundred rupees, and, if licensed, shall in addition forfeit his license.

For employing unlicensed persons.

(3) If any person knowingly receives or accepts to be entered on board any ship any seaman who has been engaged or supplied contrary to the provisions of this Act, he shall for every seaman so engaged or supplied incur a penalty not exceeding one hundred rupees.

For receiving seamen illegally supplied.

20. If any person demands or receives, either directly or indirectly, from any seaman, or from any person seeking employment as a seaman, or from any person on his behalf, any remuneration whatever, other than the fees hereby authorized, for providing him with employment, he shall for every such offence incur a penalty not exceeding fifty rupees, and, if licensed as aforesaid, shall in addition forfeit his license.

Penalty for receiving remuneration from seamen for shipping them.

21. [*Agreements with seamen.*] *Rep. by Act XV of 1863.*

Rules as to agreements in case of foreign-going ships.

22. In the case of all foreign-going ships, in whatever part of Her Majesty's dominions the same are registered, the following rules shall be observed with respect to agreements (that is to say)—

(1) Every agreement made in any port in India (except in such cases of agreements with substitutes as are hereafter specially provided for) shall be signed by each seaman in the presence of a shipping-master.

Agreement to be signed by seaman ;

Shipping-master to cause agreement to be explained to seaman ;

(2) Such shipping-master shall cause the agreement to be read over and explained to each seaman, in a language understood by him, or shall otherwise ascertain that each seaman understands the same before he signs it, and shall attest each signature.

(3) When the crew is first engaged the agreement shall be signed in duplicate, and one part shall be retained by the shipping-master, and the other part shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequently to the first departure of the ship, and shall be delivered to the master.

To be in duplicate.

(4) In the case of substitutes engaged in the place of seamen who have duly signed the agreement, and whose services are lost within twenty-four hours of the ship's putting to sea by death, desertion, or other unforeseen cause, the engagement shall, when practicable, be made before some shipping-master duly appointed in the manner hereinbefore specified ; and whenever such last-mentioned engagement cannot be so made, the master shall, before the ship puts to sea if practicable, and, if not, as soon afterwards as possible, cause the agreement to be read over and explained to the seamen ; and the seamen shall thereupon sign the same in the presence of a witness, who shall attest their signatures.

Provision for substitutes.

23. In the case of foreign-going ships making voyages averaging less than six months in duration, running agreements with the crew may be made to extend over two or more voyages, so that no such agreement shall extend beyond the next following thirtieth day of June or thirty-first day of December, or the first arrival of the ship at her port of destination in India after such date, or the discharge of cargo consequent upon such arrival ; and every person entering into such agreement, whether engaged upon the first commencement thereof or otherwise, shall enter into and sign the same in the manner hereby required for other foreign-going ships ; and every person engaged thereunder, if discharged in any port in India, shall be discharged in the manner hereby

Foreign-going ships making short voyages may have running agreements.

S. 24-A ACT I OF 1859 (MERCHANT SEAMEN). Merchant Seamen

required for the discharge of seamen belonging to other foreign-going ships.

[1] Notwithstanding anything in this section, in the case of any such foreign-going ship as aforesaid, being a ship—

(a) registered in British India under the Merchant Shipping Act, 57 & 58 Vict., 1894, or c. 60.

(b) registered in the United Kingdom under the said Merchant Shipping Act, 1894, but not employed in trading with any port in the United Kingdom,

a running agreement with the crew may be made to extend over two or more voyages so that it shall terminate either within six months from the date on which it was executed or on the first arrival of the ship at her port of destination in British India after the expiration of that period, or on the discharge of cargo consequent upon such arrival, whichever of these dates shall be the latest:

Provided that no such agreement shall continue in force, if after the expiration of such period of six months as aforesaid, the ship proceeds on a voyage from a port out of British India to any other such port which is not on the direct road or a customary route to her port of destination in British India:

Provided also that every such agreement shall, in addition to any other particulars required by law, contain such stipulations for the discharge of the crew and payment of their wages, for securing their return to the port at which they were shipped or to some other port in British India, and for other purposes on the termination of the agreement at a port out of British India under the foregoing proviso, as the Governor General in Council may direct.[4]

24. The master of every foreign-going ship for which such a running

Engagement and
discharge of seamen
in the meantime.

agreement as aforesaid is made shall, upon every return to any port in India before the final termination of the agreement, discharge or engage before the shipping-master at such port any seaman whom he is required by law so to discharge or engage; and shall upon every such return endorse on the agreement a statement (as the case may be) either that no such discharges or engagements have been made or are intended to be made before the ship again leaves port, or that all such discharges or engagements have been duly made as hereinbefore required; and shall deliver the agreement so endorsed to the shipping-master: and any master who wilfully makes a false statement in such endorsement shall incur a penalty not exceeding two hundred rupees; and the shipping-master shall also sign an endorsement on the agreement to the effect that the provisions of this Act relating to such agreement have been complied with, and shall re-deliver the agreement so endorsed to the master.

[3] 24-A. (1) When a running agreement with the crew of a foreign-

Renewal of run-
ning agreements in
certain cases.

going ship has been made under section 23 and the ship arrives after the next following thirtieth day of June or thirty-first day of December [3] or, as the case may be, after the expiration of a period of six months from the date on which it was executed [3] at a port of destination

Leg. Changes:—[1] Added by Act VI of 1906, S. 2. [2] Inserted by Act VI of 1891, S. 2. [3] Inserted by Act VI of 1906, S. 3.

in India which is not the port at which the crew have agreed to be discharged, the master may, with the previous sanction of the shipping-master, renew the agreement with the crew, or may be required by the shipping-master so to renew the agreement for the voyage from such port of destination to the port in India at which the crew have agreed to be discharged.

(2) If the master of the ship is required by the shipping-master to renew the agreement as aforesaid and refuses so to renew it, any expenses which may be incurred by the Government for the subsistence of the crew and their conveyance to the port at which they have agreed to be discharged shall be a charge upon the ship, and shall be recoverable as if they were expenses incurred in respect of distressed seamen under the provisions of Chapter III of the Indian Merchant Shipping Act, 1880.

VII of 1880.

25. For the purpose of determining the fees to be paid upon the engagement and discharge of seamen belonging to foreign-going ships which have running agreements as aforesaid, the crew shall be considered to be engaged when the agreement is first signed, and to be discharged when the agreement finally terminates; and all intermediate engagements and discharges shall be considered to be engagements and discharges of single seamen.

Fees to be paid on such running agreements.

26. In the case of home-trade ships of a burden exceeding three hundred tons, crews or single seamen may, if the master thinks fit, be engaged before a shipping-master in the manner hereinbefore directed with respect to foreign-going ships; and in every case in which the engagement is not so made, the master shall, before the ship puts to sea if practicable, and, if not, as soon afterwards as possible, cause the agreement to be read over and explained to each seaman, and the seaman shall thereupon sign the same in the presence of a witness, who shall attest his signature.

In home-trade ships agreement to be entered into before a shipping-master or other witness.

27. In cases where several home-trade ships belong to the same owner, the agreement with the seamen may, notwithstanding anything herein contained, be made by the owner instead of by the master, and the seamen may be engaged to serve in any two or more of such ships, provided that the names of the ships and the nature of the service are specified in the agreement; but, with the foregoing exception, all provisions herein contained which relate to ordinary agreements for home-trade ships shall be applicable to agreements made in pursuance of this section.

Special agreements for home-trade ships belonging to same owner.

28. If in any case a master carries any seaman to sea without entering into an agreement with him in the form and manner and at the place and time hereby in such case required, the master shall for each such offence incur a penalty not exceeding fifty rupees.

Penalty for shipping seamen without agreement duly executed.

29. The master of every foreign-going ship, of which the crew has been engaged before a shipping-master, shall, before finally leaving India, sign and send to the nearest shipping-master a full and accurate statement, in a

Changes in crew to be reported.

S. 31 ACT I OF 1859 (MERCHANT SEAMEN). Merchant Seamen

form sanctioned by the Governor General of India in Council, of every change which takes place in his crew before finally leaving India, and in default shall for each offence incur a penalty not exceeding fifty rupees ; and such statement shall be admissible in evidence subject to all just exceptions.

30. For the purpose of preventing any seamen from being shipped at any port in India contrary to the provisions of this Act, the shipping-master by himself or his deputy may enter at any time on board any ship upon which he shall have reason to believe that seamen have been shipped, and may muster and examine the several seamen employed therein ; and any person who shall obstruct the said shipping-master or deputy in such duty shall be liable to a penalty not exceeding one hundred rupees.

To prevent infrac-
tion of Act, ship-
ping-master may
board vessels and
muster seamen.

Production of
agreements and
certificates in case
of foreign-going
ships.

31. The following rules shall be observed with respect to the production of agreements and certificates of competency or service for foreign-going ships (that is to say)—

(1) The master of every foreign-going ship shall, on signing the agreement with his crew, produce to the shipping-master before whom the same is signed, the certificates of competency or service which the said master and his mate are hereby required to possess ; and upon such production being duly made, and the agreement being duly executed as hereby required, the shipping-master shall sign and give to the master a certificate to that effect.

(2) In the case of running agreements for foreign-going ships, the shipping-master shall, before the second and every subsequent voyage made after the first commencement of the agreement, sign and give to the master, on his complying with the provisions herein contained with respect to such agreements, and producing to the shipping-master the certificate of competency or service of any mate then first engaged by him, a certificate to that effect.

(3) The master of every foreign-going ship shall, before proceeding to sea, produce the certificate so to be given to him by the shipping-master as aforesaid to the Collector of Customs, or, if there be no Collector of Customs, to the officer whose duty it is to grant a port-clearance. No officer of Customs or other officer shall clear any such ship outwards without such production ; and, if any such ship attempts to go to sea without a clearance, any such officer may detain her until such certificate as aforesaid is produced.

(4) The master of every foreign-going ship shall, within forty-eight hours after the ship's arrival at her final port of destination in India or upon the discharge of the crew, whichever first happens, deliver such agreement to a shipping-master at the place ; and such shipping-master shall thereupon give to the master a certificate of such delivery ; and no officer of Customs or other officer shall clear any foreign-going ship inwards without the production of such certificate.

And if the master of any foreign-going ship fails to deliver the agreement to a shipping-master at the time and in the manner hereby directed, he shall for every default incur a penalty not exceeding fifty rupees.

Rules as to production of agreements and certificates for home-trade ships.

32. The following rules shall be observed with respect to the production of agreements and certificates of competency or service for home-trade ships of a burden exceeding three hundred tons (that is to say)—

(1) No such agreement shall extend beyond the next following thirtieth day of June or thirty-first day of December, or the first arrival of the ship at her final port of destination in India after such date, or the discharge of cargo consequent upon such arrival.

(2) The master or owner of every such ship shall, within twenty-one days after the thirtieth day of June and the thirty-first day of December in every year, or (if the ship is not at any port in India within twenty-one days after either the thirtieth day of June or the thirty-first day of December in any year) within forty-eight hours after her next arrival at any port in India, transmit or deliver to some shipping-master in India every agreement made within the six calendar months next preceding such days respectively, and shall also produce to the shipping-master the certificates of competency or service which the said master and his mate are hereby required to possess.

(3) The shipping-master shall thereupon give to the master or owner a certificate of such delivery and production; and no officer of Customs or other officer authorized to grant a port-clearance shall grant a clearance for any such ship without the production of such certificate; and, if any such ship attempts to go to sea without such clearance, any such officer may detain her until the said certificate is produced.

And if the agreement for any home-trade ship is not delivered or transmitted by the master or owner to a shipping-master at the time and in the manner hereby directed, such master or owner shall for every default incur a penalty not exceeding fifty rupees.

[4] Notwithstanding anything in this section or in any other enactment for the time being in force, the owner of home-trade ships or his agent may enter into time agreements in forms to be sanctioned by the Governor General in Council with individual seamen to serve in any one or more ships belonging to him, which agreements need not expire on either the thirtieth day of June or the thirty-first day of December.[1]

33. Every erasure, interlineation or alteration in any such agreement with seamen as is required by this Act (except additions

Alterations to be void unless attested to have been made with the consent of all parties.

so made as hereinbefore directed for shipping substitutes or persons engaged subsequently to the first departure of the ship) shall be wholly inoperative, unless proved to have been made with the consent of all the persons interested in such erasure, interlineation or alteration by the written attestation (if made in Her Majesty's dominions) of some shipping-master, Justice, officer of Customs, or other public functionary, or (if made out of Her Majesty's dominions) of a British consular officer, or, where there is no such officer, of two respectable British merchants.

34. The master shall, at the commencement of every voyage or engagement, cause a legible copy of the agreement, and if necessary a translation thereof in a language understood by the majority of the crew (omitting the signatures), to be placed or posted up in such part of the ship as to be accessible to the crew, and in default shall for each offence incur a penalty not exceeding fifty rupees.

35. Any seaman who has signed an agreement, and is afterwards discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, due compensation for the damage thereby caused to him, not exceeding one month's wages (a), and may, on adducing such evidence as the Court or Magistrate hearing the case deems satisfactory, of his having been so improperly discharged as aforesaid, recover such compensation as if it were wages duly earned.

REGULATION OF ADVANCES.

36. No advance of wages shall be made or advance-note given to any person but the seaman himself; and no advance of wages shall be made or advance-note given for any greater sum than the amount of one month's wages, nor unless the agreement contains a stipulation for the same and an accurate statement of the amount thereof, and no advance-note shall be given to any seaman who signs the agreement before a shipping-master, unless in the presence of such shipping-master.

37. If any advance of wages is made or any advance-note given to any seaman in any such manner as to constitute a breach of any of the above provisions, the wages of such seaman shall be recoverable by him as if no such advance had been made or advance-note given, and in the case of any advance-note so given, no person shall be sued thereon under the provisions hereinafter contained unless he was in person or by his agent a party to the irregular or improper manner of giving the same.

ALLOTMENT OF WAGES.

38. All stipulations for the allotment of any part of the wages of a seaman during his absence, which are made at the commencement of the voyage, shall be inserted in the agreement, and shall state the amounts and times of the payments to be made. All allotment-notes shall be in forms sanctioned by the Local Government, and shall be made for the benefit only of a relative of the seaman or some member of his family to be named in the note, and shall be payable to the shipping-master on account of such relative of the seaman or member of his family. Such allotment shall not in any case exceed one-third of the wages of the seaman.

Case-law :—(a) Is maximum amount recoverable, 20 Ind. Cas. 285; restriction not removed by Contract Act, *ibid*.

39. The owner or any agent who has authorized the drawing of an allotment-note shall pay to the shipping-master on demand the sums allotted by the note, when and as the same are made payable, unless the seaman is shown in manner hereinafter mentioned to have forfeited or ceased to be entitled to the wages out of which the allotment is to be paid ; and in the event of such sums not being paid to the shipping master on demand, the shipping-master may sue for and recover them with costs. The seaman shall be presumed to be duly earning his wages, unless the contrary is shown to the satisfaction of the Court or Magistrate, either by the official statement of the change in the crew caused by his absence made and signed by the master, as by this Act is required, or by a duly certified copy of some entry in the official log-book to the effect that he has died or left the ship, or by a credible letter from the master of the ship to the same effect, or by such other evidence, of whatever description, as the Court or Magistrate trying the case considers sufficient to show satisfactorily that the seaman has ceased to be entitled to the wages out of which the allotment is to be paid.

Owner, etc., to pay to shipping-master the sums allotted.

Suits on allotment-notes.

Evidence.

40. The shipping-master, on receiving any such sum as aforesaid, shall pay it over to the person named in the allotment-note. All such receipts and payments shall be entered in a book, and all entries in the said book shall be authenticated by the signature of the shipping-master or his deputy ; and the said book shall be at all times open to the inspection of the parties concerned.

Receipts and payments by shipping-master on account of allotment-notes.

DISCHARGE AND PAYMENT OF WAGES.

41. All seamen discharged from any foreign-going ship at any port in India in whatever part of Her Majesty's dominions the ship is registered, shall be discharged and receive their wages in the presence of a shipping-master duly appointed under this Act, except in cases where some competent Court otherwise directs ; and any master or owner of any such ship who discharges any seaman belonging thereto, or except as aforesaid pays his wages in any other manner, shall incur a penalty not exceeding one hundred rupees ; and in the case of home-trade ships of a burden exceeding three hundred tons, seamen may, if the owner or master so desires, be discharged and receive their wages in like manner.

Discharge from foreign going ships to be made before shipping-master.

42. Every master shall, not less than twenty-four hours before paying off or discharging any seaman, deliver to him, or, if he is to be discharged before a shipping-master, to such shipping-master, a full and true account, in a form sanctioned by the Local Government, of his wages and of all deductions to be made therefrom on any account whatever, and in default shall for each offence incur a penalty not exceeding fifty rupees ; and no deduction from the wages of any seaman (except in respect of any matter happening after such delivery) shall be allowed unless it is included in the account so delivered ; and the master shall during the voyage enter the various matters in respect of which such deductions are

Master to deliver account of wages.

made, with the amounts of the respective deductions as they occur, in a book to be kept for that purpose, and shall, if required, produce such book at the time of the payment of wages and also upon the hearing before any competent authority of any complaint or question relating to such payments.

43. Upon the discharge of any seaman or upon payment of his wages, the master shall sign and give him a certificate of his discharge, in a form sanctioned by the Local Government, specifying the period of his service and the time and place of his discharge; and if any master fails to sign and give to any such seaman such certificate of discharge, he shall for each such offence incur a penalty not exceeding one hundred rupees; and the master shall also upon the discharge of every certificated mate whose certificate of competency or service has been delivered to and retained by him, return such certificate, and shall in default incur a penalty not exceeding two hundred rupees.

44. Every shipping-master shall hear and decide any question whatever between a master or owner and any of his crew which both parties agree in writing to submit to him; and every award so made by him shall be binding on both parties, and shall in any legal proceeding which may be taken in the matter before any Court or Magistrate, be deemed to be conclusive as to the rights of the parties; and any document purporting to be such submission or award shall be *prima facie* evidence thereof. An award made by a shipping-master under this section may be enforced by a Magistrate in the same manner as an order for the payment of wages made by such Magistrate under the provision of section 55.

45. In any proceeding relating to the wages, claims or discharge of any seaman carried on before any shipping-master under the provisions of this Act, such shipping-master may call upon the owner or his agent, or upon the master or any mate or other member of the crew, to produce any log-books, papers or other documents in their respective possession or power relating to any matter in question in such proceeding, and may call before him and examine any of such persons being then at or near the place on any such matter; and every owner, agent, master, mate, or other member of the crew who, when called upon by the shipping-master, does not produce any such paper or document as aforesaid if in his possession or power, or does not appear and give evidence, shall, unless he shows some reasonable excuse for such default, for each such offence incur a penalty not exceeding fifty rupees.

Settlement of wages.

Release to be signed before and attested by the shipping-master;

46. The following rules shall be observed with respect to the settlement of wages (that is to say)—

(1) Upon the completion before a shipping-master of any discharge and settlement, the master or owner and each seaman shall respectively, in the presence of the shipping-master, sign, in a form sanctioned by

the Local Government, a mutual release of all claims in respect of the past voyage or engagement, and the shipping-master shall also sign and attest the release and shall retain the same.

(2) Such release so signed and attested shall operate as a mutual discharge and settlement of all demands between the parties thereto in respect of the past voyage or engagement.

(3) A copy of such release, certified under the hand of such shipping-master to be a true copy, shall be given by him to any party thereto requiring the same, and such copy shall be receivable in evidence upon any future question touching such claims as aforesaid, and shall have all the effect of the original of which it purports to be a copy.

(4) In cases in which discharge and settlement before a shipping-master are hereby required, no payment, receipt, settlement or discharge otherwise made shall operate or be admitted as evidence of the release or satisfaction of any claim.

(5) Upon any payment being made by a master before a shipping-master, the shipping-master shall, if required, sign and give to such master a statement of the whole amount so paid, and such statement shall, as between the master and his employer, be received as evidence that he has made the payments therein mentioned.

LEGAL RIGHTS TO WAGES.

47. A seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

48. No seaman shall by any agreement forfeit his lien upon the ship or be deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled; and every stipulation in any agreement inconsistent with any provision of this Act, and every stipulation by which any seaman consents to abandon his rights to wages in the case of the loss of the ship or to abandon any right which he may have or obtain in the nature of salvage, shall be wholly inoperative.

49. No right to wages shall be dependent on the earning of freight; and every seaman and apprentice who would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover the same notwithstanding that freight has not been earned; but in all cases of wreck or loss of the ship, proof that he has not exerted himself to the utmost to save the ship, cargo, and stores shall bar his claim.

50. If any seaman or apprentice to whom wages are due under the last preceding section dies before the same are paid, they shall be paid and applied in the manner hereinafter specified with regard to the wages of seamen who die during a voyage.

In case of death, such wages to be paid as after mentioned.

51. In cases where the service of any seaman terminates before the period contemplated in the agreement by reason of the wreck or loss of the ship, and also in cases where such service terminates before such period as aforesaid by reason of his being left on shore at any place abroad under a certificate of his unfitness or inability to proceed on the voyage granted under the provisions of the Merchant Shipping Act, 1854, such seaman shall be entitled to wages for the time of service prior to such termination as aforesaid, but not for any further period. ^{17 & 18 Vict. c. 104.}

Rights to wages in case of termination of service by wreck or illness.

52. No seaman or apprentice shall be entitled to wages for any period during which he unlawfully refuses or neglects to work when required, whether before or after the time fixed by the agreement for his beginning work; nor, unless the Court or Magistrate hearing the case otherwise directs, for any period during which he is lawfully imprisoned for any offence committed by him.

Wages not to accrue during refusal to work or imprisonment.

53. The master or owner of every ship shall pay to every seaman his wages within three days after the cargo has been delivered or within five days after the seaman's discharge, whichever first happens; and the seaman shall at the time of his discharge be entitled to be paid on account a sum equal to one-fourth part of the balance due to him; and every master or owner who neglects or refuses to make payment in manner aforesaid without sufficient cause, shall pay to the seaman a sum not exceeding the amount of two days' pay for each of the days not exceeding ten days during which payment is delayed beyond the respective periods aforesaid; and such sum shall be recoverable as wages.

Period within which wages are to be paid.

[1] 54. When any moneys are payable in India to any seaman or apprentice for wages or otherwise under any agreement wherein such moneys are expressed to be payable in British currency, the seaman or apprentice shall be entitled to demand and recover, in the current coin of India, the amount due to him estimated according to the rate of exchange for the time being fixed by the Secretary of State for India in Council, with the concurrence of the Lords Commissioners of Her Majesty's Treasury for the adjustment of financial transactions between the Imperial and the Indian Governments.

Sum in current coin of India recoverable by seaman under agreement expressing his wages, etc., to be payable in British currency.

Leg. Changes :—[1] Substituted for the original section by Act XIII of 1876, S. 10.

MODE OF RECOVERING WAGES.

55. Any seaman or apprentice or any person duly authorized on his behalf may sue, in a summary manner, before any Magistrate acting in or near to the place at which the service has terminated or at which the seaman or apprentice has been discharged or at which any person upon whom the claim is made is or resides, for any amount of wages due to such seaman or apprentice not exceeding five hundred rupees. Every order made by such Magistrate in the matter shall be final.

Seaman may sue summarily before any Magistrate for wages not exceeding five hundred rupees.
Order of Magistrate to be final.

56. When an order for the payment of wages is made by a Magistrate under the last preceding section and the wages are not paid at the time and in the manner prescribed, the sum mentioned in the order, with such further sum as may be thereby awarded for costs, shall be levied by distress and sale of the goods and chattels of the person directed to pay the same under a warrant to be issued for that purpose by the Magistrate.

Levy of wages by distress.

57. No suit or proceeding for the recovery of wages under the sum of five hundred rupees shall be instituted by or on behalf of any seaman or apprentice in any Court of admiralty or vice-admiralty or in any Court of civil judicature other than the Court of Small Causes, where such Court exists, unless the owner of the ship is adjudged bankrupt or declared insolvent, or unless the ship is under arrest or is sold by the authority of any such Court, or unless the Magistrate, acting under the authority of this Act, refers the case to be adjudged by such Court.

No suit for wages under five hundred rupees to be instituted in Admiralty Court, etc., except in certain cases.

58. Every master of a ship shall, so far as the case permits, have the same rights, liens and remedies for the recovery of his wages which by this Act or by any law or custom any seaman, not being a master, has for the recovery of his wages; and if, in any proceeding in any Court of admiralty or vice-admiralty touching the claim of a master to wages, any right of set-off or counter-claim is set up, it shall be lawful for such Court to enter into and adjudicate upon all questions, and to settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and to direct payment of any balance which is found to be due.

Master to have same remedies for wages as seamen.

WAGES AND EFFECTS OF DECEASED SEAMEN.

59. Whenever a seaman or apprentice, on a voyage which is to terminate at any port in India, dies during such voyage, the master shall take charge of all money, clothes, and effects which he leaves on board, and shall enter in the official log-book a statement of the amount of money and a description of the effects left by the deceased, and in case of a sale of such effects, the sum received for each article sold.

Master to take charge of effects of deceased seamen.

60. The master shall, within forty-eight hours after his arrival at his port of destination in India, deliver any such effects as aforesaid, and pay any money which he has taken charge of or received, and also the wages due to deceased, to the shipping-master at such port, and shall give to such shipping-master an account of the effects, money and wages so to be delivered and paid; and no deductions claimed in such account shall be allowed unless verified, if there is an official log-book, by the entry therein hereinbefore required, and also by such other vouchers (if any) as may be reasonably required by the shipping-master to whom the account is rendered.

61. If the master fails to take such charge of the money or other effects of a seaman or apprentice dying during a voyage, or to make such entries in respect thereof, or to make such payment or delivery, or to give such account as hereinbefore respectively directed, he shall be accountable for the money, wages and effects of the seaman or apprentice to the shipping-master as aforesaid, and shall pay and deliver the same accordingly; and such master shall in addition incur a penalty not exceeding treble the value of the money or effects, or, if such value is not ascertained, not exceeding five hundred rupees. All money, wages and effects of any seaman or apprentice dying during a voyage shall be recoverable in the same Courts and by the same modes of proceeding by which seamen are hereby enabled to recover wages due to them.

62. When money or effects left by or due to any deceased seaman or apprentice, are paid or delivered to a shipping-master, then, subject to such deductions for expenses incurred in respect of the seaman or apprentice or of his said money and effects as the shipping-master thinks proper to allow, the shipping-master may pay and deliver the said money and effects to any claimants who can prove themselves to the satisfaction of the said shipping-master to be entitled thereto, and the said shipping-master shall be thereby discharged from all further liability in respect of the money and effects so paid and delivered: or if he think fit so to do the shipping-master may require probate or letters of administration or a certificate under [1] the Succession Certificate Act, 1889, [1] to be taken out, and thereupon pay and deliver the said money and effects to the legal representative of the deceased. VII of 1889.

63. In cases of wages or effects of deceased seamen or apprentices received by any shipping-master to which no claim is substantiated within one year from the receipt thereof by such shipping-master, it shall be the duty of the shipping-master to cause such effects to be sold and to pay the proceeds of the sale and the unclaimed wages into the public treasury. If any subsequent claim is made to such money and is established to the satisfaction of the shipping-master, the amount or so much as shall appear to be due to the claimant shall be paid out of the public treasury. If the claim is not established to

Leg. Changes :—[1] Substituted by Act XII of 1891.

the satisfaction of the shipping-master, the claimant may apply by petition in a summary way to the Supreme Court of Judicature of the presidency ; [1]* * * * and such Court, after taking evidence either orally or on affidavit, shall make such order on the petition as shall seem just :

Provided that, after the expiration of six years from the receipt of such wages or effects by the shipping-master, no such claim shall be entertained without the sanction of the Local Government.

PROVISIONS, HEALTH AND ACCOMMODATION.

64. Any three or more of the crew of any ship registered at, trading with, or being at any port or place in India, may complain to any shipping-master or other officer duly appointed in this behalf by the Local Government that the provisions or water for the use of the crew are at any time of bad quality, unfit for use, or deficient in quantity ; and such officer may thereupon examine the said provisions or water or cause them to be examined ; and if, on examination, such provisions or water are found to be of bad quality and unfit for use, or to be deficient in quantity, the person making such examination shall signify the same in writing to the master of the ship ; and if such master does not thereupon provide other proper provisions or water in lieu of any so signified to be of a bad quality and unfit for use, or does not procure the requisite quantity of any so signified to be insufficient in quantity, or uses any provisions or water which have been so signified as aforesaid to be of a bad quality and unfit for use, he shall in every such case incur a penalty not exceeding two hundred rupees ;

and, upon every such examination as aforesaid, the officers making or directing the same shall enter a statement of the result of the examination in the official log, and shall send a report thereof to the shipping-master, and such report, if produced out of the custody of such shipping-master, shall be received in evidence in any legal proceeding.

65. If the officer to whom any such complaint as last aforesaid is made certifies in such statement as aforesaid that there was no reasonable ground for such complaint, each of the parties so complaining shall be liable to forfeit to the owner out of his wages a sum not exceeding one week's wages.

Forfeiture for frivolous complaint.
Allowance for short or bad provisions.

66. In the following cases (that is to say)—

- (1) if during a voyage the allowance of any of the provisions which any seaman has by his agreement stipulated for, is reduced (except in accordance with any regulations for reduction by way of punishment contained in the agreement, and also except for any time during which such seaman wilfully and without sufficient cause refuses or neglects to perform his duty or is lawfully under confinement for misconduct, either on board or on shore) ;

- (2) if it is shown that any of such provisions are or have during the voyage been bad in quality and unfit for use ;

the seaman shall receive by way of compensation for such reduction or bad quality, according to the time of its continuance, the following sums, to be paid to him in addition to and to be recoverable as wages (that is to say)—

- (1) if his allowance is reduced by any quantity not exceeding one-third of the quantity specified in the agreement, a sum not exceeding three annas in the case of a European seaman or other person shipped on the same footing as a European seaman, or one anna in the case of a lascar or native seaman ;
- (2) if his allowance is reduced by more than one-third of such quantity, six annas in the case of a European seaman or other person shipped on the same footing as a European seaman, or two annas in the case of a lascar or native seaman ;
- (3) in respect of such bad quality as aforesaid, a sum not exceeding eight annas in the case of a European seaman or other person shipped on the same footing as a European seaman, or three annas in the case of a lascar or native seaman.

But if it is shown to the satisfaction of the Court or Magistrate trying the case that any provisions, the allowance of which has been reduced, could not be procured, or supplied in proper quantities, and that proper and equivalent substitutes were supplied in lieu thereof, such Court or Magistrate shall take such circumstances into consideration and shall modify or refuse compensation as the justice of the case may require.

67. All foreign-going ships and all home-trade ships of a burden exceeding three hundred tons shall have always on board a sufficient supply of medicines and appliances, suitable for diseases and accidents likely to happen on sea voyages, according to such scale as shall be from time to time issued by the Local Government with the approval of the Governor General of India in Council, and published at Calcutta, Madras, and Bombay in the Government Gazettes, [1]*
Medicines, etc., to be provided and kept on board certain ships.
 and, in default thereof, the owner or master of every such ship shall be liable to a penalty not exceeding two hundred rupees :

Provided, however, that this section shall not apply to ships navigating from the United Kingdom and coming within the provisions of section 224 of the Merchant Shipping Act, 1854.

17 & 18 Vict.,
c. 104

68. Every master shall keep on board proper weights and measures for the purposes of determining the quantities of the several provisions and articles served out, and shall allow the same to be used at the time of serving out such provisions and articles in the presence of a witness whenever any dispute arises about such quantities, and in default shall for every offence incur a penalty not exceeding one hundred rupees.
Masters to keep weights and measures on board.

69. Whenever the master or any seaman of any ship registered at any place in India shall receive any hurt or injury in the service of the vessel, the expense of providing the necessary surgical and medical advice and attendance with medicines, and of his subsistence, until he shall be cured or shall be brought back to the port from which he was shipped or other port agreed upon, shall be defrayed, with the cost of his conveyance to such port, by the owner of the vessel without any deduction on that account from the wages of such master, officer or seaman; and, if paid by himself, may be recovered as part of his wages; and, if paid or allowed out of any moneys forming part of the revenues of India, shall be a charge upon the ship, and may be recovered with full costs of suit by the Secretary of State in Council.

70. A place or places of shelter shall be provided below a well caulked and substantial deck for the men engaged under this Act; such place or places shall be so arranged as to allow for the men the following spaces:—

(1) for each European seaman or apprentice or other person shipped on the same footing as a European seaman, [1] ten superficial feet [1] if the place be not less than six feet in height from deck to deck; or [1] sixty cubic feet [1] if the height from deck to deck be less than six feet;

(2) for each lascar or native seaman or other person shipped on the same footing as a lascar, [1] six superficial [2] and thirty-six cubic [2] feet [1]; and if the place allotted be under the top-gallant fore-castle, such fore-castle deck shall be not less than four feet six inches above the one below it.

Every such place shall be kept free from stores or goods of any kind, not being the personal property of the crew in use during the voyage; and if any such place in any ship is not in the whole sufficiently large to give such space for each seaman and apprentice as hereinbefore required, or is not properly caulked and in all other respects securely and properly constructed and well ventilated, the owner shall, for every such failure to comply with the provisions of this section, incur a penalty not exceeding two hundred rupees; and if any such space as aforesaid is not kept free from goods and stores as aforesaid, the master shall, for every such failure to comply with the provisions of this section, incur a penalty not exceeding one hundred rupees.

71. The shipping-master at any port in India, by himself or his deputy, may enter at any time on board of any ship upon which seamen have been shipped at such port, and inspect the provisions and water provided for the use of the crew, and the medicines and appliances and the accommodation for seamen prescribed by this Act or by the Merchant Shipping Act, 1854. If on

17 & 18 Vict.,
c. 104.

Leg. Changes:—[1] Substituted by Act XIII of 1876, S. 9. [2] Inserted by Act XIII of 1876, S. 9.

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inspection the provisions or water are found to be of bad quality and unfit for use or to be deficient in quantity, the shipping-master shall proceed as provided in section 64 of this Act, and the penalty prescribed in the said section shall be incurred by any default of the master of the ship in respect of such provisions or water.

Procedure if provisions, etc., are found to be bad.

POWER OF MAKING COMPLAINTS.

72. If any seaman or apprentice, whilst on board any ship, states to the master that he desires to make complaint to a Magistrate against the master or any of the crew, the said master shall, if the ship is then at a place where there is a Magistrate, so soon as the service of the ship will permit, and if the ship is not then at such a place, so soon after her first arrival at such a place as the service of the ship will permit, allow such seaman to go ashore or send him ashore in proper custody, so that he may be enabled to make such complaint, and shall, in default, incur a penalty not exceeding one hundred rupees.

Seaman to be allowed to go ashore to make complaint to a Justice.

PROTECTION OF SEAMEN FROM IMPOSITION.

73. No wages due or accruing to any seaman or apprentice shall be subject to attachment from any Court; and every payment of wages to a seaman shall be valid in law, notwithstanding any previous sale or assignment of such wages or of any incumbrance thereon; and no assignment or sale of such wages, or of salvage made prior to the accruing thereof, shall bind the party making the same; and no power of attorney or authority for the receipt of any such wages or salvage shall be irrevocable.

Sale of and charge upon wages to be invalid.

74. No debt exceeding in amount three rupees incurred by any seaman after he has engaged to serve, shall be recoverable until the service agreed for is concluded.

Debt exceeding three rupees when recoverable.

75. If any person demands or receives from any seaman or apprentice payment in respect of his board or lodging in the house of such person for a longer period than such seaman or apprentice has actually resided or boarded therein, he shall incur a penalty not exceeding one hundred rupees.

Penalty for over-charges by lodging-house-keepers.

76. If any person receives or takes into his possession or under his control any moneys, documents or effects of any seaman or apprentice, and does not return the same or pay the value thereof when required by such seaman or apprentice, subject to such deduction as may be justly due to him from such seaman or apprentice in respect of board or lodging or otherwise, or absconds therewith, he shall incur a penalty not exceeding one hundred rupees; and any Magistrate may, besides inflicting such penalty by summary order, direct the amount or value of such moneys, documents or effects, subject to such deduction as aforesaid, to be forthwith paid to such seaman or apprentice.

Penalty for detain-ing seamen's effects.

77. Every person who, not being in the service of Her Majesty and

Persons not to go on board before the final arrival of ship, without permission.

not being duly authorized by law for the purpose, goes on board any ship about to arrive at the place of her destination before her actual arrival at the place of her discharge, without the permission of the master, shall for every such offence incur a penalty not exceeding two hundred rupees, and the master or person in charge of such ship may take any such person so going on board as aforesaid into custody, and deliver him up forthwith to any police-officer, to be by him taken before a Magistrate to be dealt with according to the provisions of this Act.

78. If, within twenty-four hours after the arrival of any ship

Penalty for solicitations by lodging-house-keepers.

at any port in India, any person then being on board such ship solicits any seaman to become a lodger at the house of any person letting lodgings for hire, or takes out of such ship any effects of any seaman, except under his personal direction and with the permission of the master, he shall for every such offence incur a penalty not exceeding fifty rupees.

DISCIPLINE.

79. Any master of, or any seaman or apprentice belonging to, any

Penalty for misconduct endangering ship, or life or limb.

ship registered at, trading with or being at any port or place in India, who, by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction or serious damage of such ship, or tending immediately to endanger the life or limb of any person belonging to or on board of such ship, or who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship from immediate loss, destruction, or serious damage, or for preserving any person belonging to or on board of such ship from immediate danger to life or limb, shall for every such offence be [1]punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to two years, or with both.[1]

80. Any Court having Admiralty jurisdiction in India may, upon

Admiralty Court in India may in certain cases remove master and appoint a new master.

application by the owner of any ship being within the jurisdiction of such Court, or by the part owner or consignee, or by the agent of the owner, or by any certificated mate, or by one-third or more of the crew of such ship, and upon proof on oath to the satisfaction of such Court that the removal of the master of such ship is necessary, remove him accordingly; and may also, with the consent of the owner or his agent, or the consignee of the ship, or if there is no owner or agent of the owner or consignee of the ship within the jurisdiction of the Court then without such consent, appoint a new master in his stead, and may also make such order and may require such security in respect of costs in the matter as it thinks fit.

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81. [*Power to investigate cases of alleged incompetency and misconduct.*] *Rep. by Act XV of 1863.*

82. [*Local Government may cancel or suspend certificates in certain cases.*] *Rep. by Act XV of 1863.*

83. Whenever any seaman who has been lawfully engaged, or any apprentice to the sea-service, commits any of the following offences, he shall be liable to be punished summarily as follows (that is to say)—

(a) Offences of seamen and apprentices, and their punishments.

(1) for desertion (b) he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also to forfeit all or any part of the clothes and effects he leaves on board, and all or any part of the wages or emoluments which he has then earned, and also, if such desertion takes place at any port or place not in India, at the discretion of the Court, to forfeit all or any part of the wages or emoluments he may earn in any other ship in which he may be employed until his next return to any port or place in India, and to satisfy any excess of wages paid by the master or owner of the ship from which he deserts, to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be paid to him ;

(2) for neglecting or refusing, without reasonable cause, to join his ship or to proceed to sea in his ship, or for absence without leave at any time within twenty-four hours of the ship's sailing from any port either at the commencement or during the progress of any voyage, or for absence at any time without leave and without sufficient reason from his ship or from his duty not amounting to desertion or not treated as such by the master, he shall be liable to imprisonment for any period not exceeding ten weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit out of his wages a sum not exceeding the amount of two days' pay, and in addition for every twenty-four hours of absence either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute ;

(3) for quitting the ship without leave after her arrival at her port of delivery and before she is placed in security, he shall be liable to forfeit out of his wages a sum not exceeding one month's pay ;

(4) for wilful disobedience to any lawful command (c) he shall be liable to imprisonment for any period not exceeding four weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit out of his wages a sum not exceeding two days' pay ;

Case-law :—(a) Sentence of Justice of Peace appealable to Court of Session, 2 M.H.C. 473. (b) Liability of seamen in Calcutta to imprisonment for—, 12 C. 492. (c) Lawful—includes command, if not actually by, still in presence and with approval of competent officer, 39 B. 559.

(5)(a) for continued wilful disobedience to lawful commands, or continued wilful neglect of duty, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit for every twenty-four hours' continuance of such disobedience or neglect, either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute ;

(6) for assaulting any master or mate he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour ;

(7) for combining with any other or others of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship or the progress of the voyage, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour ;

(8) for wilfully damaging the ship, or embezzling, or wilfully damaging any of her stores or cargo, he shall be liable to forfeit out of his wages a sum equal in amount to the loss thereby sustained, and also, at the discretion of the Court, to imprisonment for any period not exceeding twelve weeks, with or without hard labour ;

(9) for any act of smuggling of which he is convicted, and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay to such master or owner such a sum as is sufficient to reimburse the master or owner for such loss or damage ; and the whole or a proportionate part of his wages may be retained in satisfaction or on account of such liability, without prejudice to any further remedy.

84. Upon the commission of any of the offences enumerated in the last preceding section, an entry thereof shall be made in the official log-book, and shall be signed by the master and also by the mate or one of the crew ; and the offender if still in the ship, shall, before the next subsequent arrival of the ship at any port, or, if she is at the time in port, before her departure therefrom, either be furnished with a copy of such entry or have the same read over distinctly and audibly to him, and may thereupon make such reply thereto as he thinks fit ; and a statement that a copy of the said entry has been so furnished, or that the same has been so read over as aforesaid, and the reply (if any) made by the offender, shall likewise be entered and signed in manner aforesaid ; and in any subsequent legal proceeding, the entries hereinbefore required shall, if practicable, be produced or proved, and in default

Case-law :—(a) Offence under clause against European British subject, by whom triable, 4 M.H.C. App. 28 ; wilful disobedience by several persons not punishable under both cls. (5) and (7), 3 Bom. L.R. 589.

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of such production or proof, the Court hearing the case may, at its discretion, refuse to receive evidence of the offence.

85. Every seafaring person whom the master of any ship is, under the authority of this Act or any law, compelled to take on board and convey, and every person who goes to sea in any ship without the consent of the master or owner or other person entitled to give such consent, shall, so long as he remains in such ship, be subject to the same laws and regulations for preserving discipline, and to the same penalties and punishments for offences constituting or tending to a breach of discipline, to which he would be subject if he were a member of the crew and had signed the agreement.

Seamen whom masters of ships are compelled to convey, and persons going in ships without leave, to be subject to penalties for breach of discipline.

86. Whenever, either at the commencement or during the progress of any voyage, any seaman or apprentice neglects or refuses to join, or deserts from or refuses to proceed to sea in, any ship in which he is duly engaged to serve, or is found otherwise absenting himself therefrom without leave, the master or any mate, or the owner, ship's husband, or consignee, may, with or without the assistance of police-officers, who are hereby directed to give the same if required, apprehend him without first procuring a warrant; and thereupon in any case, and shall, in case he so requires and it is practicable, convey him before some Court capable of taking cognizance of the matter, to be dealt with according to law; and may, for the purpose of conveying him before such Court, detain him in custody for a period not exceeding twenty-four hours or such shorter time as may be necessary, or may if he does not so require, or if there is no such Court at or near the place, at once convey him on board; and if any such apprehension appears to the Court before which the case is brought, to have been made on improper or on insufficient grounds, the master, mate, owner, ship's husband, or consignee, who makes the same or causes the same to be made, shall incur a penalty not exceeding two hundred rupees; but such penalty, if inflicted, shall be a bar to any action for false imprisonment in respect of such apprehension.

Master or owner may apprehend deserters without warrant.

87. Whenever any seaman or apprentice is brought before any Court on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, such Court may, if the master or the owner or his agent so requires, instead of committing the offender to prison, cause him to be conveyed on board for the purpose of proceeding on the voyage, or deliver him to the master or any mate of the ship, or the owner or his agent, to be by them so conveyed, and may in such case order any costs and expenses properly incurred by or on behalf of the master or owner by reason of the offence, to be paid by the offender, and if necessary to be deducted from any wages which he has then earned, or which by virtue of his then existing engagement he may afterwards earn.

Deserters may be sent on board in lieu of being imprisoned.

88. If any seaman or apprentice is imprisoned on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, or of his having committed any other breach of discipline, and if during such imprisonment and before his engagement is at an end his services are required on board his ship, any Magistrate may, at the request of the master or of the owner or his agent, cause such seaman or apprentice to be conveyed on board his said ship for the purpose of proceeding on the voyage, or to be delivered to the master or any mate of the ship or to the owner or his agent, to be by them so conveyed, notwithstanding that the termination of the period for which he was sentenced to imprisonment has not arrived.

89. In all cases of desertion from any ship registered at a port or place in India while such ship is at any place out of India, the master shall produce the entry of such desertion in the official log-book to the person or persons required by the Merchant Shipping Act, 1854, to endorse on the agreement a certificate of such desertion; and such person or persons shall thereupon make and certify a copy of such entry and also a copy of the said certificate of desertion; the master shall forthwith transmit such copies to the shipping-master at the port where such seaman was engaged, who shall, if required, cause the same to be produced in any legal proceeding; and such copies, if purporting to be so made and certified as aforesaid, shall in any legal proceeding relating to such desertion be received as evidence of the entries therein appearing.

90. Whenever a question arises whether the wages of any seaman or apprentice are forfeited for desertion, it shall be sufficient for the party insisting on the forfeiture to show that such seaman or apprentice was duly engaged in or that he belonged to the ship from which he is alleged to have deserted, and that he quitted such ship before the completion of the voyage or engagement, or if such voyage was to terminate at any port or place in India, and the ship has not returned, that he is absent from her, and that an entry of the desertion has been duly made in the official log-book; and thereupon the desertion shall, so far as relates to any forfeiture of wages or emoluments under the provisions hereinbefore contained, be deemed to be proved, unless the seaman or apprentice can produce a proper certificate of discharge or can otherwise show to the satisfaction of the Court that he had sufficient reasons for leaving his ship.

91. Whenever in any proceeding relating to seamen's wages it is shown that any seaman or apprentice has in the course of the voyage been convicted of any offence by any competent tribunal and rightfully punished therefor by imprisonment or otherwise, the Court hearing the case may direct a part of the wages due to such seaman, not exceeding thirty rupees, to be applied in

17 & 18 Vict.,
c. 104.

Seamen imprisoned for desertion or breach of discipline may be sent on board before termination of sentence.

Entries and certificates of desertion abroad to be copied, sent home, and admitted in evidence.

Facilities for proving desertion so far as concerns forfeiture of wages.

Costs of procuring imprisonment may, to the extent of thirty rupees, be deducted from wages.

reimbursing any costs properly incurred by the master in procuring such conviction and punishment.

92. Whenever any seaman contracts for wages by the voyage or by the run or by the share, and not by the month or other stated period of time, the amount of forfeiture to be incurred under this Act shall be taken to be an amount bearing the same proportion to the whole wages or share as the period hereinbefore mentioned in fixing the amount of such forfeiture (as the case may be) bears to the whole time spent in the voyage; and if the whole time spent in the voyage does not exceed the period for which the pay is to be forfeited, the forfeiture shall extend to the whole wages or share.

93. All clothes, effects, wages and emoluments which under the provisions hereinbefore contained are forfeited for desertion, shall be applied in the first instance in or towards the reimbursement of the expenses occasioned by such desertion to the master or owner of the ship from which the desertion has taken place, and may, if earned subsequently to the desertion, be recovered by such master or by the owner, or his agent in the same manner as the deserter might have recovered the same if they had not been forfeited; and in any legal proceeding relating to such wages, the Court may order the same to be paid accordingly; and, subject to such reimbursement, the same shall be paid into the public treasury and carried to the account of Government; and in all other cases of forfeiture of wages under the provisions hereinbefore contained, the forfeiture shall, in the absence of any specific directions to the contrary, be for the benefit of the master or owner by whom the wages are payable.

94. Any question concerning the forfeiture of or deductions from the wages of any seaman or apprentice, may be determined in any proceeding lawfully instituted with respect to such wages, notwithstanding that the offence in respect of which such question arises, though hereby made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding.

95. If any seaman, on or before being engaged, wilfully and fraudulently makes a false statement of the name of his last ship, or last alleged ship, or wilfully and fraudulently makes a false statement of his own name, he shall incur a penalty not exceeding fifty rupees, and such penalty may be deducted from any wages he may earn by virtue of such engagement as aforesaid, and shall, subject to reimbursement of the loss and expenses (if any) occasioned by any previous desertion, be paid and applied in the same manner as other penalties payable under this Act.

96. Whenever any seaman commits an act of misconduct for which his agreement imposes a fine, and which it is intended to punish by enforcing such fine, an entry thereof shall be made in the official log-book, and a copy of such entry shall be furnished or the same shall be read over to the offender, and an entry of such reading

over, and of the reply (if any) made by the offender shall be made, in the manner and subject to the conditions hereinbefore specified with respect to the offences against discipline specified in and punishable under this Act;

and such fine shall be deducted and paid over as follows (that is to say), if the offender is discharged at any port or place in India, and the offence, and such entries in respect thereof as aforesaid, are proved in the case of a foreign-going ship to the satisfaction of the shipping-master before whom the offender is discharged, and in the case of a home-trade ship to the satisfaction of the shipping-master at or nearest to the place at which the crew is discharged, the master or owner shall deduct such fine from the wages of the offender and pay the same over to such shipping-master;

and if before the final discharge of the crew in India, any such offender as aforesaid enters into any of Her Majesty's ships or is discharged at any place not in India, and the offence and such entries as aforesaid are proved to the satisfaction of the officer in command of the ship into which he so enters or of the consular officer, officer of Customs, or other person by whose sanction he is so discharged, the fine shall thereupon be deducted as aforesaid, and an entry of such deduction shall then be made in the official log-book (if any) and signed by such officer or other person; and on the return of the ship to India, the master or owner shall pay over such fine, in the case of foreign-going ships to the shipping-master before whom the crew is discharged, and in the case of home-trade ships to the shipping-master at or nearest to the place at which the crew is discharged;

and if any master or owner neglects or refuses to pay over any such fine in manner aforesaid, he shall for each such offence incur a penalty not exceeding six times the amount of the fine retained by him: Provided that no act of misconduct for which any such fine as aforesaid has been inflicted and paid shall be otherwise punished under the provisions of this Act.

97. Every person who by any means whatever persuades or attempts to persuade any seaman or apprentice to neglect or refuse to join or proceed to sea in or to desert from his ship, or otherwise to absent himself from his duty, shall for each such offence in respect of each such seaman or apprentice incur a penalty not exceeding one hundred rupees; and every person who wilfully harbours or secretes any seaman or apprentice who has deserted from his ship or who has wilfully neglected or refused to join or has deserted from his ship, knowing or having reason to believe such seaman or apprentice to have so done, shall for every such seaman or apprentice so harboured or secreted, incur a penalty not exceeding one hundred rupees.

98. Any person who secretes himself and goes to sea in any ship without the consent of either the owner, consignee or master, or of a mate, or of any person in charge of such ship, or of any other person entitled to give such consent, shall incur a penalty not exceeding two hundred rupees, or be liable to imprisonment, with or without hard labour, for any period not exceeding four weeks.

Penalty for obtaining passage surreptitiously.

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99. If during the progress of a voyage the master of any ship registered at any port or place in India, is superseded or for any other reason quits the ship and is succeeded in the command by some other person, he shall deliver to his successor the various documents relating to the navigation of the ship and to the crew thereof which are in his custody; and shall in default incur a penalty not exceeding one thousand rupees; and such successor shall, immediately on assuming the command of the ship, enter in the official log a list of the documents so delivered to him.

On change of masters, documents hereby required to be handed over to successor.

ENQUIRIES INTO WRECKS.

100. [*Enquiry may be instituted in cases of wreck and casualty.*] *Rep. by the Indian Merchant Shipping Act, 1875 (IV of 1875).*

101. [*Investigation.*] *Rep. by the Indian Merchant Shipping Act, 1875 (IV of 1875).*

102. [*Report.*] *Rep. by the Indian Merchant Shipping Act, 1875 (IV of 1875).*

OFFICIAL LOGS.

103. An official log-book of every ship registered at any port or place in India, except home-trade ships of a burden not exceeding three hundred tons, shall be kept in a form sanctioned by the Local Government; and such official log may, at the discretion of the master or owner, either be kept distinct from the ordinary ship's log or united therewith, so that in all cases all the blanks in the official log be duly filled up.

Official logs to be kept in forms sanctioned by Local Government.

104. Every entry in every official log shall be made as soon as possible after the occurrence to which it relates, and if not made on the same day as the occurrence to which it relates shall be made and dated so as to show the date of the occurrence, and of the entry respecting it; and in no case shall any entry therein in respect of any occurrence happening previously to the arrival of the ship at her final port of discharge be made more than twenty-four hours after such arrival.

Entries to be made in due time.

Entries required in official log.

105. Every master of a ship for which an official log-book is hereby required shall make or cause to be made therein entries of the following matters (that is to say)—

- Convictions. (1) every legal conviction of any member of his crew and the punishment inflicted;
- Offences. (2) every offence committed by any member of his crew for which it is intended to prosecute, or to enforce a forfeiture, or to exact a fine, together with such statement concerning the reading over such entry and concerning the reply (if any) made to the charge, as hereinbefore required;
- Punishments. (3) every offence for which punishment is inflicted on board and the punishment inflicted;

Conduct, etc., of crew.	(4) a statement of the conduct, character and qualifications of each of his crew, or a statement that he declines to give an opinion on such particulars ;
Illness and injuries.	(5) every case of illness or injury happening to any member of the crew with the nature thereof, and the medical treatment adopted (if any) ;
Deaths.	(6) every case of death happening on board, and of the cause thereof ;
Births.	(7) every birth happening on board, with the sex of the infant and the names of the parents ;
Marriages.	(8) every marriage taking place on board, with the names and ages of the parties ;
(9) the name of every seaman or apprentice who ceases to be a member of the crew otherwise than by death, with the place, time, manner and cause thereof ;	
Quitting ship.	
Wages of men entering Navy.	(10) the amount of wages due to any seaman who enters Her Majesty's service during the voyage ;
Wages of deceased seamen.	(11) the wages due to any seaman or apprentice who dies during the voyage, and the gross amount of all deductions to be made therefrom :
Sale of deceased men's effects.	(12) the sale of the effects of any seaman or apprentice who dies during the voyage, including a statement of each article sold and of the sum received for it ;
Collisions.	(13) every collision with any other ship, and the circumstances under which the same occurred.

106. The entries hereby required to be made in official log-books shall be signed as follows (that is to say), every such entry shall be signed by the master and by the mate or some other of the crew, and every entry of illness, injury, death or birth shall be also signed by the surgeon or medical practitioner on board (if any) ; and every entry of wages due to, or of the sale of the effects of, any seaman or apprentice who dies shall be signed by the master and by the mate and some other member of the crew, and every entry of wages due to any seaman who enters Her Majesty's service, shall be signed by the master and by the seaman or by the officer authorized to receive the seaman into such service.

Penalties in respect of official logs. **107.** The following offences in respect of official log-books shall be punishable as hereinafter mentioned (that is to say)—

(1) If in any case an official log-book is not kept in the manner hereby required, or if any entry hereby directed to be made in any such log-book is not made at the time and in the manner hereby directed, the master shall for each such offence incur the specific penalty herein mentioned in respect thereof. or, where there is no such specific penalty, a penalty not exceeding fifty rupees.

(2) Every person who makes or procures to be made or assists in making any entry in an official log-book, in respect of any occurrence

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happening previously to the arrival of the ship at her final port of discharge in India, more than twenty-four hours after such arrival, shall for each such offence incur a penalty not exceeding three hundred rupees.

(3) Every person who wilfully destroys or mutilates or renders illegible any entry in any official log-book, or who wilfully makes or procures to be made or assists in making any false or fraudulent entry or omission in any such log-book, shall for each such offence be liable to imprisonment, with or without hard labour, for a term not exceeding one year.

108. All entries made in any official log-book as hereinbefore directed shall be received in evidence in any proceeding in any Court of Justice, subject to all just exceptions.

Entries in official logs to be received in evidence.

109. The master of every foreign-going ship shall within forty-eight hours after the ship's arrival at her final port of destination in India, or upon the discharge of the crew, whichever first happens, deliver to the shipping-master before whom the crew is discharged, the official log-book of the voyage; and the master or owner of every home-trade ship of a burden exceeding three hundred tons shall, within twenty-one days after the thirtieth day of June and the thirty-first day of December in every year, transmit or deliver to some shipping-master in India the official log-book for the preceding half-year; and every master or owner who refuses or neglects to deliver his official log-book, as hereby required, shall be subject to a penalty not exceeding two hundred rupees.

Official logs to be delivered to shipping-master on ship's arrival at port of destination in India.

110. If any ship ceases, by reason of transfer of ownership or change of employment, to fall within the operation of section 103 of this Act, the master or owner thereof shall, if such ship is then in any port in India, within one month, and if she is elsewhere, within six months, deliver or transmit to the shipping-master at the port to which the ship belonged, the official log-book duly made out to the time at which she ceased to be within such operation, and in default shall for each offence incur a penalty not exceeding one hundred rupees; and if any ship is lost or abandoned, the master or owner thereof, shall, if practicable, and as soon as possible, deliver or transmit to the shipping-master at the port to which the ship belonged, the official log-book (if any) duly made out to the time of such loss or abandonment, and in default shall for each offence incur a penalty not exceeding one hundred rupees.

Official logs to be transmitted to shipping-master in case of transfer of ship and in case of loss.

PROCEDURE, ETC.

111. Whenever, in the course of any legal proceedings instituted at any port or place in India before any Judge or Magistrate or before any person authorized by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject-matter of such proceeding, any deposition (a) that such

Depositions to be received in evidence when witnesses cannot be produced.

Case-law ;—(a) Of person not a seaman not admissible under section, 1 Hyde 195.

witness may have previously made in relation to the same subject-matter before any Justice or Magistrate in Her Majesty's dominions (including all parts of India other than those subject to the same Local Government as the port or place where such proceedings are instituted), or any British consular officer elsewhere, shall, if authenticated by the signature of the Justice, Magistrate or consular officer, be admissible in evidence on due proof that such witness cannot be found within the jurisdiction of the Court in which such proceedings are instituted :

Provided that, if the proceeding is criminal, such deposition shall not be admissible unless it was made in the presence of the person accused and the fact that it was so made is certified by the Justice, Magistrate or consular officer. It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition ; and in any criminal proceeding, such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified.

112. All offences under this Act, made punishable by any penalty, may be prosecuted summarily before a Magistrate (a) or any person exercising the powers of a Magistrate. The provisions of Act XIII of 1856, relating to the adjudication of fines and penalties and the enforcing payment thereof, shall apply to penalties imposed under this Act in the towns of Calcutta, Madras, and Bombay. [1]

Adjudication of offences and recovery of penalties.

113. In all cases where any Court or Magistrate has power to make an order directing payment to be made of any seaman's wages, penalties, or other sums of money, then if the party so directed to pay the same is the master or owner of a ship and the same is not paid at the time and in manner prescribed in the order, the Court or Magistrate who made the order may, in addition to any other powers which such Court or Magistrate may have for the purpose of compelling payment, direct the amount remaining unpaid to be levied by distress and sale of the said ship, her tackle, furniture and apparel.

Wages, penalties, etc., payable by master or owner may be levied by distress of ship.

MISCELLANEOUS.

114. Nothing in this Act shall extend to any ship belonging to or in the service of Her Majesty or to any ship belonging to any foreign Prince or State ; and nothing in this Act, except as otherwise hereinafter provided, shall extend to any ship belonging to the subjects of any foreign Prince or State.

Act not to extend to certain ships.

115. When the master of a foreign ship being at any port in India engages any lascar or other native seaman to proceed to any port out of India, he shall enter into an agreement with such seaman, and the

Engagements between masters of foreign ships and lascars or native seamen.

Leg. Changes :—[1] Repealed by Act XVI of 1874.

Case-law :—(a) Sentence of Justice of Peace, appealable to Court of Session, 2 M. H.O. 478.

agreement shall be made before a shipping-master in the manner herein-before provided for the making of agreements in the case of foreign-going ships, and all the provisions of [1]Chapter IV of the Indian Merchant Shipping Act, 1883, and section 22 of this Act [1] respecting the form V of 1883. of such agreements and the stipulations to be contained in them and the making and signing of the same, shall be applicable to the engagement of such seaman: and the master of such foreign ship shall give to the shipping-master a bond with the security of some approved person resident in India for an amount calculated at the rate of one hundred rupees for every such seaman and conditioned for the due performance of the said agreement and stipulations [2] and for the repayment to the Secretary of State for India in Council, of all expenses which may be incurred by the Government in respect of any such lascar or other native seaman who may be discharged or left behind at any port out of India and becomes distressed and is relieved under the provisions of the Merchant Shipping Act, 1854, section 211, and the 17 & 18 Vic: enactments amending the same.[2] c. 104.

116. The fees prescribed in section 6 of this Act shall be payable in respect of every such engagement, and deductions from the wages of seamen so engaged may be made to the extent and in the manner allowed by the said section.

117. If any lascar or other native seaman is engaged by the master of any foreign ship otherwise than is allowed in the two last preceding sections, such master shall be liable to a penalty of one hundred rupees for every such seaman so engaged. It shall be lawful for the shipping-master, by himself or his deputy, to enter on board any foreign ship upon which he shall have reason to believe that any such seaman has been shipped, and the provisions of section 30 of this Act shall be applicable in respect of every such ship.

118. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say)—

Interpretation-
clause.

the word "India" shall mean the territories which are or may become vested in Her Majesty by the Statute 21 & 22 Vict., c. 106, entitled "An Act for the better Government of India ;"

the expression "Local Government" shall mean the person or persons for the time being immediately administering the executive government of any portion of the said territories ;

the expression "Home-trade ship" shall include every ship employed in trading between any ports of the said territories : or between any port of the said territories and any port or place on the continent of India [3] or in the Straits Settlements [3] or in the island of Ceylon ;

Leg. Changes:—[1] Substituted by Act XII of 1891. [2] Added by Act VI of 1891. [3] Inserted by Act VI of 1891.

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the expression "foreign-going ship" shall include every ship employed in trading between any port of the said territories and any port or place not in the said territories nor on the continent of India [1] nor in the Straits Settlements [1] nor in the island of Ceylon ;

"Master." the word "master" shall include every person (except a pilot) having command or charge of any ship ;

the word "seaman" shall include every person (except masters, pilots and apprentices) employed or engaged in any capacity on board any ship ;

"Number," [2] * * *

"Gender," [2] * * *

"Person," the word "person" shall include a corporation.

TABLE A.

(See section 5.)

FEEs TO BE CHARGED FOR MATTERS TRANsACTED AT SHIPPING OFFICES.

1. Engagement or discharge of crews--

	Rs.	As.	P.
In ships under 100 tons	...	3	0 0
From 100 to 200 "	...	7	0 0
200 to 300 "	...	10	0 0
300 to 400 "	...	12	8 0
400 to 500 "	...	15	0 0
500 to 600 "	...	17	8 0
600 to 700 "	...	20	0 0
700 to 800 "	...	22	8 0
800 to 900 "	...	25	0 0
900 to 1,000 "	...	27	8 0
above 1,000 "	...	30	0 0

and so on for ships of larger tonnage, adding for every one hundred tons above one thousand, two rupees and eight annas.

2. Engagement or discharge of seamen separately—one rupee for each seaman.

TABLE B.

(See section 6.)

SUMS TO BE DEDUCTED FROM WAGES BY WAY OF PARTIAL REPAYMENT OF FEES IN TABLE A.

	Rs.	As.	P.
1. In respect of engagements and discharges of crews, upon each engagement and each discharge—			
From wages of any mate, purser, engineer, surgeon, carpenter or steward.	0	12	0
From wages of all others except apprentices	0	8	0
2. In respect of engagements and discharges of seamen, separately, upon each engagement and each discharge	...	...	...
	0	8	0

Leg. Changes :—[1] Inserted by Act VI of 1891. [2] Repealed by Act X of 1914.

3. 4 ACT XIII OF 1876 (MERCHANT SEAMEN). Merchant Seamen

THE INDIAN MERCHANT SEAMEN ACT, 1876.

(ACT XIII OF 1876.)

[Passed on the 29th June, 1876.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1876	XIII	Indian Merchant Seamen ...	Am., Act XII of 1891. Rep. in pt., Act X of 1914.

An Act to amend the law relating to Merchant Seamen.

WHEREAS it is expedient to amend the law relating to Merchant Seamen in manner hereinafter appearing; It is hereby enacted as follows:—

Preliminary.

Short title. 1. This Act may be called "The Indian Merchant Seamen's Act, 1876":

Local extent. It extends to the whole of British India;

Commencement. [1] * * * *

2. In this Act "seaman" includes every person (except masters, pilots and apprentices duly indentured and registered) employed or engaged in any capacity to serve at sea for the purposes of any ship.

Interpretation-clause.

Distressed Seamen.

3. A certificate signed by a Secretary to the Local Government, or by such other officer as it appoints in this behalf, to the effect that any seaman named therein is distressed, shall, in all proceedings under sections 211, 212 and 213 of the Merchant Shipping Act, 1854, be conclusive evidence that such seaman is distressed within the meaning of the same sections; and any master of a British ship refusing to accept such seaman as a distressed seaman under the provisions of the said sections shall, for each seaman with respect to whom he so refuses, be liable to a fine which may extend to one thousand rupees.

Evidence of distress of seamen.

Penalty for refusing to accept distressed seamen.

Discharge of Seamen.

4. No seaman or apprentice not shipped in British India shall be discharged without the previous sanction in writing of such officer as the Local Government appoints in this behalf: and such sanction shall be given or withheld at the discretion of the officer so appointed; but whenever it is withheld, the reasons for so withholding it shall be recorded by him in writing.

Discharge of seamen.

Leg. Changes:—[1] Repealed by Act X of 1914.

Merchant Seamen ACT XIII OF 1876 (MERCHANT SEAMEN). S. 8

Any person discharging a seaman or apprentice in wilful disobedience to the prohibition contained in this section, shall be liable to imprisonment for a term which may extend to three months, or to fine not exceeding one thousand rupees, or to both.

Engagement of Seamen.

Engagement of Native seamen. 5. The Local Government, or such officer as it appoints in this behalf, may, by order in writing signed by its Secretary or by such officer, prohibit any person from engaging in the territories subject to the said Government, or in any specified portion of such territories, any Native of India to serve as a seaman on board any ship specified in such order; but in all such cases the reasons for the prohibition shall be stated in writing.

Whoever wilfully disobeys the prohibition contained in this section shall be liable to imprisonment for a term which may extend to three months, or to fine not exceeding one thousand rupees, or to both.

Deserters.

Deserters. 6. Whenever any seaman or apprentice not shipped in British India deserts or otherwise absents himself without leave from any ship in which he is engaged to serve, the master of the ship shall, within forty-eight hours of discovering such desertion or absence, report the same to such officer as the Local Government appoints in this behalf, unless in the meantime the deserter or absentee returns.

Any master wilfully neglecting to comply with the provisions of this section, may be punished with fine not exceeding one hundred rupees, or imprisonment for a term which may extend to one month, or with both.

Imprisoned Seamen.

Power to deal with imprisoned seamen in accordance with section 88, Act I of 1859. 7. If any seaman or apprentice not shipped in British India is imprisoned for any offence for which he has been sentenced to imprisonment for a term not exceeding one month, any Magistrate may deal with him in the same way as he may deal with a seaman or apprentice imprisoned on any of the grounds mentioned in section 88 of Act No. I of 1859 (*for the amendment of the law relating to Merchant Seamen*).

Rules as to imprisoned seamen. 8. If any seaman or apprentice not shipped in British India is imprisoned on a complaint made by or on behalf of the master or owner of the ship in which he is engaged to serve, on any of the grounds mentioned in the said Act No. I of 1859, section 88, or for any offence for which he has been sentenced to imprisonment for a term not exceeding one month, the following rules shall be observed:—

- (a) No person shall, while such imprisonment lasts, without the previous sanction in writing of the Local Government or of such officer as it appoints in this behalf, engage any Native of India to serve as a seaman on board such ship;
- (b) the Local Government, or such officer as it appoints in this behalf, may tender such seaman or apprentice to the master

S. 10 ACT XIII OF 1876 (MERCHANT SEAMEN). **Merchant Seamen**

or owner of the ship in which he is engaged to serve, and if such master or owner, without assigning reasons satisfactory to the Local Government or to such officer as aforesaid, refuse to receive him on board, may require such master or owner to deposit in the local Shipping Office (1) the wages due to such seaman or apprentice, and his money, clothes and other effects, and (2) such sum as may in the opinion of the Local Government or of such officer as aforesaid be sufficient to defray the cost of the passage of the said seaman or apprentice to the port at which he was shipped, according to the scale of cost usual in the case of distressed seamen.

Whoever wilfully disobeys the prohibition contained in clause (a) of this section shall be liable to imprisonment for a term which may extend to three months, or to fine not exceeding one thousand rupees, or to both.

Any master or owner refusing or neglecting to deposit such wages, money, clothes and other effects, or such sum as aforesaid, may be punished with fine not exceeding five hundred rupees, and in default of payment of such fine [1] with imprisonment [1] for a term which may extend to three months.

Accommodation of Seamen.

9. And whereas it is expedient to increase the space required by the said Act No. I of 1859, section 70, to be allowed for European seamen and apprentices and for lascars or Native seamen; It is hereby further enacted as follows :—

Such section shall be read as if for the expressions " nine superficial feet," " fifty-four cubic feet," and " four superficial feet," the expressions " ten superficial feet," " sixty cubic feet," and " six superficial feet " were respectively substituted, and as if in the third paragraph of the same section, after the word " superficial," the words " and thirty-six cubic " were inserted.

Meaning of ' established par value.'

Meaning of expression 'established par value' in Act I of 1859, section 54.

10. And whereas doubts have been raised as to the meaning of the expression " established par value " in the said Act No. I of 1859, section 54, for the purpose of removing such doubts, it is hereby enacted as follows :—

For section 54 of Act No. I of 1859, the following shall be substituted (that is to say) :

" 54. When any monies are payable in India to any seaman or apprentice for wages or otherwise under any agreement wherein such monies are expressed to be payable in British currency, the seaman or apprentice shall be entitled to demand and recover in the current coin of India the amount due to him estimated according to the rate of exchange for the time being fixed by the Secretary of State for India in Council, with the concurrence of the Lords Commissioners of Her Majesty's Treasury, for the adjustment of financial transactions between the Imperial and the Indian Governments."

Leg. Changes :—[1] Substituted by Act XII of 1891.

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THE INDIAN MERCHANT SHIPPING ACT, 1880.
(ACT VII OF 1880.)

[Passed on the 11th March, 1880.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1880	VII	Indian Merchant Shipping ...	Rep. in pt., Act XIV of 1882. " " Act X of 1889. " " and Am., Act XII of 1891. Am., Act VI of 1891. " Act XVII of 1891. " Act XVIII of 1908.

An Act to amend the law relating to Merchant Shipping, and for other purposes.

Preamble, WHEREAS it is expedient to prevent the departure of certain ships from British India ;

and whereas it is also expedient to provide for the relief of distressed seamen and apprentices at ports in British India, and for the recovery of wages due to, and expenses incurred in respect of, such seamen and apprentices in cases to which section 211 of the Merchant Shipping Act, 1854, and section 16 of the Merchant Shipping Act, 1855, do not apply of their own force ;

17 & 18 Vict., c. 104.
18 & 19 Vict., c. 91.

and whereas it is also expedient to provide in other respects herein-after appearing for the regulation and control of merchant shipping ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

- Short title.** 1. This Act may be called the Indian Merchant Shipping Act, 1880 :
- Commencement.** And it shall come into force on the first day of June, 1880.
- Interpretation-clause.** 2. In this Act, unless there is something repugnant in the subject or context,—
- “ ship : ” “ ship ” includes every description of vessel used in navigation, not propelled by oars :
- “ master : ” “ master ” means any person (except a pilot or harbour-master) having for the time being the charge or control of a ship :
- “ port , ” “ port ” in any provision of this Act includes also any part of a river or channel leading to a port which for the purposes of such provision the Local Government may, from time to time, by notification in the official Gazette, declare to be included in such port.

S. 4 ACT VII OF 1880 (MERCHANT SHIPPING). Merchant Shipping

CHAPTER II.

UNSEAWORTHY AND UNSAFE SHIPS.

Saving clause. **3.** Nothing in this chapter contained shall apply—

- (a) to any ship belonging to, or hired by, Her Majesty or the Secretary of State for India in Council ;
- (b) to any ship of less than one hundred and fifty tons register employed solely in fishing or [1] to any sailing ship of less than one hundred and fifty tons register employed [1] in plying coastwise between ports situate in India and Ceylon ;
- (c) to any pleasure yacht.

[2] The Local Government, with the previous sanction of the Governor General in Council, may from time to time, by notification in the local official Gazette, exclude from, or bring again within, the operation of this Chapter or any part thereof, subject to such modifications thereof (if any) as may be specified in the notification, any Native craft not square-rigged.[2]

[3] The Governor General in Council may, from time to time by notification in the Gazette of India, exclude from or bring again within the operation of sections 33 to 43, inclusive, any class of steam-ships of less than one hundred and fifty tons register which are employed in plying coastwise between ports situate in India and Ceylon, and do not carry cargo.[3]

4. In this chapter, "British Indian ship" means a ship registered under Act No. XIX of 1838, Act No. X of 1841 or Act No. XI of 1850, or under any other law passed by the Governor General in Council and for the time being in force for the registration of ships in India ; and

**Interpretation-
clause.** "British
Indian ship."

"British ship"

"British ship" includes a British Indian ship :

"manner prescribed" means such manner as the Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by rules published in the official Gazette, prescribe :

"manner pre-
scribed."

a ship is "unseaworthy" within the meaning of this chapter when the materials of which she is made, her construction, the qualifications of the master, the number and description of the crew, the weight, description and stowage of cargo, the tackle, sails, rigging, stores, ballast and other equipment generally are not such as to render her in every respect fit for the proposed voyage or service :

a ship is "unsafe" within the meaning of this chapter when by reason of the defective condition of her hull, equipments or machinery, or by reason of overloading or improper loading, she is unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended [1] and a ship shall be deemed to be unsafe when so loaded as to

Leg. Changes :—[1] Inserted by Act XVIII of 1908. [2] Added by Act XVII of 1891. [3] Added by Act XVIII of 1908.

Merchant Shipping ACT VII OF 1880 (MERCHANT SHIPPING). S. 5

submerge in perfectly smooth salt water the centre of the disc indicating the loadline : [1]

[2] "amidships" means the middle of the length of the load water-line as measured from the fore side of the stem to the aft side of the stern-post.

Sending or taking Unseaworthy Ship to Sea.

5. Every person who sends or attempts to send a British Indian ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered shall, unless he proves that he used all reasonable means to insure her being sent to sea in a seaworthy state, or that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Every person sending unseaworthy ship to sea liable to penalty.

Every master of a British Indian ship who knowingly takes such ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered shall, unless he proves that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Master taking unseaworthy ship to sea liable to penalty.

For the purpose of giving such proof, every person charged under this section may give evidence in the same manner as any other witness.

Prosecution to be by, or with consent of, Local Government.

No prosecution under this section shall be instituted except by, or with the consent of, the Local Government.

Implied Condition of Seaworthiness in Contract of Service.

6. In every contract of service, express or implied, between the owner of a British ship and the master or any seaman thereof, and in every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any such ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner that such owner and the master, and every agent charged with the loading of such ship or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to secure the seaworthiness of such ship for the voyage at the time when such voyage commences, and to keep her in a seaworthy state for the voyage during the same :

Obligation of owner to crew with respect to seaworthiness.

Provided that nothing in this section shall subject such owner to any liability by reason of such ship being sent to sea in an unseaworthy state where, owing to special circumstances, the so sending her to sea is reasonable and justifiable.

Proviso.

Leg. Changes :—[1] Inserted by Act XVIII of 1908. [2] Added by Act XVII of 1891.

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Detention of Unsafe Ships by the Local Government.

7. The Local Government, if it has reason to believe, on complaint or otherwise, that a British ship in any port to which it may from time to time specially extend this section is unsafe, may provisionally order the detention of such ship for the purpose of being surveyed.

Provisional detention by Local Government.

A written statement of the grounds of such detention shall be forthwith served on the master of such ship.

Service of grounds on master.

8. When the Local Government provisionally orders the detention of a ship, it shall forthwith appoint some competent person to survey such ship and report thereon, and, on receiving his report, may either order the ship to be released or, if in its opinion the ship is unsafe, may order her to be finally detained.

Power to appoint surveyor.

Action on receipt of his report.

An order of final detention under this section may be either absolute or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, as the Local Government thinks necessary for the protection of human life; and the Local Government may, from time to time, vary or add to any such order:

Order of final detention.

Provided that, before an order for final detention is made, a copy of the report shall be served upon the master of the ship, and within seven days after such service the owner or master may appeal against such report, in the manner prescribed, to the Court of Survey (hereinafter mentioned) for the port where the ship is detained.

Service of report on master and appeal to Court of Survey.

9. Where a ship has been provisionally detained and a person has been appointed under section 8 to survey such ship, the owner or master of the ship, at any time before such person makes such survey, may require that he shall take with him as assessor such person as such owner or master may select, being a person named in the list of assessors prepared under section 15, or, if there is no such list, or if it is impracticable to procure the attendance of any person named in such list, a person of nautical engineering or other special skill and experience; and

Option to owner or master of appointing assessor to accompany surveyor.

in such case, if the surveyor and assessor agree that the ship should be detained or released, the Local Government shall cause the ship to be detained or released accordingly, and the owner or master shall have no appeal;

Procedure where surveyor and assessor agree;

but, if the surveyor and assessor differ in their report, the Local Government may act as if the requisition had not been made, and the owner or master shall have such appeal touching the report of the surveyor as is hereinbefore provided.

where they differ.

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10. Notwithstanding anything contained in section 8, the Local Government may at any time, when a ship has been provisionally detained, instead of following the procedure hereinbefore provided, refer the matter to the Court of Survey for the port where the ship is detained.

Detaining-officers.

11. For the better execution of this chapter, the Local Government may, from time to time, appoint a sufficient number of fit persons as its officers, and may suspend or remove any of them.

Every officer so appointed (hereinafter referred to as a detaining-officer) shall have, for the purpose of his duties under this chapter, the following powers, (that is to say) :—

- (a) he may go on board any British ship and may inspect the same or any part thereof, or any of the machinery, equipments and cargo on board thereof, and may require the unloading or removal of any cargo, ballast or tackle, not unnecessarily detaining or delaying her from discharging, unloading or proceeding on any voyage ;
- (b) he may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him, may examine such persons, and may, by a like summons, require returns in writing to any enquiries he thinks fit to make ;
- (c) he may require and enforce the production of all books, papers or documents which he considers important ; and
- (d) he may administer oaths, or may, in lieu of administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

12. Every detaining-officer shall, in addition to the powers hereinbefore conferred, have the same power as the Local Government has under sections 7 and 8, respectively, of provisionally ordering the detention of a ship for the purpose of being surveyed, and of appointing a person to survey her ; and if he thinks that a ship so detained by him is not unsafe, may order her to be released.

Every such officer shall forthwith report to the Local Government any order made by him for the detention or release of a ship.

Of the Court of Survey and of Appeals and References thereto.

13. A Court of Survey for a port shall consist of a Judge sitting with two assessors.

14. The Judge shall be a District Judge, Judge of a Court of Small Causes, Presidency Magistrate, Magistrate of the first class or other fit person appointed in this behalf by the Local Government either generally or for any specified case.

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The assessors. **15.** The assessors shall be persons of nautical engineering or other special skill and experience.

One of them shall be appointed by the Local Government either generally or in each case, and the other shall be summoned by the Judge, in the manner prescribed, out of a list of persons from time to time prepared for the purpose and published by the Local Government in the official Gazette, or, if there is no such list or if it is impracticable to procure the attendance of any person named in such list, shall be appointed by the Judge.

Judge to summon assessors.

16. The Judge shall, on receiving notice of an appeal or a reference from the Local Government, immediately summon the assessors, in the manner prescribed, to meet forthwith.

Case to be heard in open Court.

17. Every such appeal and reference shall be heard in open Court.

Powers of Judge and assessors.

18. The Judge and each assessor shall, for the purposes of this chapter, have the same powers as are by section 11 conferred on a detaining-officer.

Judge may appoint surveyor.

19. The Judge may appoint any competent person to survey the ship and report thereon to the Court.

Owner or master may attend at survey.

20. The owner and master of the ship and any person appointed by the owner or master, and also any person appointed by the Local Government, may attend at any inspection or survey made in exercise or pursuance of the powers conferred by section 18 or section 19.

Power of Judge to detain or release ship.

21. The Judge shall have the same power as the Local Government has to order the ship to be released or finally detained ; but, unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

Report to Local Government by Court.

22. The Judge shall report the proceedings of the Court in each case to the Local Government in the manner prescribed, and each assessor shall either sign such report or report to the Local Government the reasons for his dissent.

Power of Local Government to make rules with respect to Court of Survey.

23. The Local Government may, with the previous sanction of the Governor General in Council, from time to time make rules to carry into effect the provisions of this chapter with respect to a Court of Survey, and in particular with respect to—

- (a) the procedure before the Court ;
- (b) the requiring, on an appeal, of security for costs and damages ;
- (c) the amount and application of fees ; and
- (d) the ascertainment, in case of dispute, of the proper amount of costs under this chapter.

Such rules shall be published in the official Gazette, and shall thereupon have the force of law.

Scientific Referees.

24. If the Local Government is of opinion that an appeal under this chapter involves a question of construction or design, or of scientific difficulty or important principle, it may refer the matter to such one or more out of a list of scientific referees, to be from time to time prepared by the Local Government, as may appear to possess the special qualifications necessary for the particular case, and may be selected by agreement between the Port-officer and the appellant, or, in default of any such agreement, by the Local Government; and thereupon the appeal shall be determined by the referee or referees instead of by the Court of Survey.

Power to appoint referee to hear appeal.

25. The Local Government, if the appellant in any such appeal so requires and gives security to its satisfaction to pay the costs of and incidental to the reference, shall refer such appeal to a referee or referees selected as aforesaid.

Option to appellant to require referee to be appointed.

26. The referee or referees to whom an appeal is referred under section 24 or section 25 shall have the same powers as a Judge of the Court of Survey.

Costs of Detention and Damages incidental thereto.

27. If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the provisional detention of a ship, the Government shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey.

Referee to have powers of Court of Survey.

Liability of Government for costs and damages when ship wrongly detained.

28. If a ship is finally detained under this chapter, or if it appears that a ship provisionally detained was at the time of such detention unsafe, the owner of the ship shall be liable to pay to Government its costs of and incidental to the detention and survey of the ship; and such costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

Liability of ship-owner for costs when ship rightly detained.

29. For the purposes of this chapter the costs of and incidental to any proceeding before a Court of Survey, and a reasonable amount in respect of the remuneration of the surveyor or officer of the Local Government, shall be deemed to be part of the costs of the detention and survey of the ship.

What included in costs of detention and survey.

30. When a complaint is made to the Local Government or a detaining-officer that a British ship is unsafe, it shall be in the discretion of such Government or officer (as the case may be) to require the complainant to give security to the satisfaction of such Government or officer for the costs and compensation which such complainant may become liable to pay as hereinafter mentioned :

Power to require from complainant security for costs, etc.

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Provided that, where the complaint is made by one-fourth, being not less than three, of the seamen belonging to the ship, and is not in the opinion of such Government or officer frivolous or vexatious, such security shall not be required; and such Government or officer shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps to ascertain whether the ship ought to be detained under this chapter.

31. Where a ship is detained in consequence of any complaint, and the circumstances are such that the Government is liable under this chapter to pay to the owner of the ship any costs of compensation, the complainant shall be liable to pay to the Government all such costs and compensation as the Government incurs, or is liable to pay, in respect of the detention and survey of the ship.

Costs, etc., payable by Government recoverable from complainant.

Grain-cargoes.

32. No cargo of which more than one-third consists of any kind of grain, corn, rice, paddy, pulse, seeds, nuts, or nut-kernels (hereinafter referred to as grain-cargo) shall be carried on board any British Indian ship unless the same be contained in bags, sacks or barrels, or secured from shifting by boats or bulkheads or otherwise.

Stowage of cargo of grain, etc.

If the owner or master of any ship, or any agent of such owner who is charged with the loading of such ship or the sending her to sea, knowingly allows any grain-cargo or part of a grain-cargo to be shipped therein for carriage contrary to the provisions of this section, he shall be punished with fine which may extend to three thousand rupees.

Penalty for improper stowage of such cargo.

Deck and Load-lines.

[1] 33. (1) Every British Indian ship shall be permanently and conspicuously marked outside with lines of not less than twelve inches in length and one inch in breadth painted longitudinally on each side amidships, or as near thereto as practicable, and indicating the position of each deck which is above water.

Marking of deck lines.

(2) The upper edge of each of these lines shall be level with the upper side of the deck-plank next the waterway at the place of marking.

(3) The lines shall be white or yellow on a dark ground, or black on a light ground.

[1] 34. (1) The master of every British ship not being a coasting-vessel within the meaning of the Sea Customs Act, 1878, VIII of 1879 shall, before his ship is entered outwards from any port in British India upon any voyage, or, if that is not practicable, as soon after as may be, mark outside upon each of her sides amidships, or as near thereto as practicable, in white or yellow on a dark ground, or in black on a light

Marking of load-lines in case of vessels which are not coasting-vessels.

Leg. Changes:—[1] Substituted by Act XVII of 1891.

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ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre.

(2) The centre of the disc shall be placed at such level below the deck-line marked under the provisions of this chapter or of the Merchant Shipping Act, 1876, as may be approved by the Local Government, and shall indicate the maximum load-line in perfectly smooth salt-water to which it shall be lawful to load the ship.

(3) When a ship has been marked as by this section required, she shall be kept so marked until she next returns to a port of discharge in British India or arrives at a port in the United Kingdom.

[1] 35. (1) Every person applying for entry of any such ship outwards shall insert, in the form of application made to the Customs-collector, a statement in writing of the distance in feet and inches between the centre of such disc and the upper edge of each of the lines indicating the position of the ship's decks which is above such centre; and, if default be made in delivering this statement, the Customs-collector may refuse to enter the ship outwards.

(2) A copy of this statement shall be entered in the agreement with the crew before it is signed by any member of the crew, and no shipping-master shall proceed with the engagement of a crew for any such ship until this entry has been made.

(3) The master shall enter a copy of this statement in the official log-book (if any).

[1] 36. (1) The master of every British ship which is a coasting-vessel within the meaning of the Sea Customs Act, 1878, shall, before proceeding to sea from any port, mark outside upon each of her sides amidships, or as near thereto as practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre.

(2) The centre of the disc shall be placed at such level below the deck-line marked under the provisions of this chapter or of the Merchant Shipping Act, 1876, as may be approved by the Local Government, and shall indicate the maximum load-line in perfectly smooth salt-water to which it shall be lawful to load the ship.

(3) When a ship has been marked as required by this section, she shall be kept so marked until notice has been given of an alteration.

[1] 37. (1) The master of every such ship shall also once in every twelve months, immediately before the ship proceeds to sea, send or deliver to the Collector, or other principal officer of Customs of such port as the Local Government may, from time to time, appoint in this behalf, a statement in writing of the distance in feet and inches between the centre of the disc and the upper edge of each of the lines indicating the position of the ship's decks which is above that centre.

Leg. Changes :—[1] Substituted by Act XVII of 1891.

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(2) The master, before the ship proceeds to sea after any renewal or alteration of the disc, shall send or deliver to the Collector or other principal officer of Customs aforesaid notice in writing of such renewal or alteration, together with such statement in writing as before mentioned of the distance between the centre of the disc and the upper edge of each of the deck-lines.

(3) If default be made in sending or delivering any notice or statement required by this section to be sent or delivered, the master shall be liable to a fine which may extend to one thousand rupees.

Modification of certain foregoing provisions. [1] 38. The foregoing provisions of this chapter with respect to deck and load-lines are subject to the provisions of the two next following sections.

Position of disc and approval of and certificate as to position thereof. [1] 39. (1) The position of the disc mentioned in sections 34 and 36 respectively shall be fixed in accordance with the tables framed by the Load-line Committee appointed in the United Kingdom before the passing of the Merchant Shipping Act, 1890, subject to such allowance as may be necessary in consequence of any difference between the position of the deck line marked under the provisions of this chapter or of the Merchant Shipping Act, 1876, and the position of the line from which free-board is measured under the said tables, and subject also to such modifications, if any, of the tables and the application thereof as may from time to time, with the previous approval of the Governor General in Council, be sanctioned by the Local Government. 50 Vict., c. 2.
39 & 40 Vict., c. 80.

(2) The Local Government shall from time to time appoint—

(a) a surveyor employed by Lloyd's or by any other society, corporation or association for the survey or registry of shipping approved by the Board of Trade under section 2 of the Merchant Shipping Act, 1890, and specially authorized in this behalf by Lloyd's or by such society, corporation or association, as the case may be, or 52 Vict., c. 9

(b) an officer specially selected by the Local Government for the purpose,

to approve and certify on its behalf from time to time the position of any such disc as aforesaid, and any alteration thereof, and may, with the previous sanction of the Governor General in Council, from time to time fix the fees to be taken in respect of any such approval or certificate.

(3) The Local Government may suspend or remove from office any surveyor or officer so appointed.

Rules. [1] 40. (1) The Local Government, with the previous sanction of the Governor General in Council, may from time to time make rules—

(a) determining the lines or marks to be used in connection with any such disc as aforesaid, in order to indicate the maximum

Leg. Changes :—[1] Substituted by Act XVII of 1891.

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load-line under different circumstances and at different seasons, and declaring that the provisions of this chapter are to have effect as if any such line were drawn through the centre of the disc ;

- (b) as to the mode in which the disc and the lines or marks to be used in connection therewith are to be marked or affixed on the ship, whether by painting, cutting or otherwise ;
- (c) as to the mode of application for, and form of, certificates under this chapter ; and
- (d) as to the entry of such certificates, and any other prescribed particulars concerning the draught of water and free-board of the ship, in the official log (if any) of the ship, or other publication thereof on board the ship, and as to delivering copies of such entries.

(2) Rules under clause (a) of sub-section (1) may, with respect to any class or classes of ships,—

- (i) declare what shall be deemed to be seasons of fair weather and seasons of foul weather, respectively, for any of the purposes of the rules, and
- (ii) modify the tables referred to in sub-section (1) of section 39.

(3) All rules intended to be made under this section shall previously be published in draft in such manner as may be prescribed by the Local Government, and shall not be formally promulgated for ninety days at the least after such publication, and all such rules shall, while in force, have effect as if enacted by this Act.

Penalty for neglecting to mark, or submerging, load-line.

[1] 41. Any master of a ship who neglects to cause his ship to be marked as by this chapter required or to keep her so marked, or who allows the ship to be so loaded that when in perfectly smooth salt-water the centre of the disc is submerged,

and any person who conceals, removes, alters, defaces or obliterates, or suffers any person under his control to conceal, remove, alter, deface or obliterate, any of the lines or marks prescribed by or under this chapter, except in the event of the particulars thereby denoted being lawfully altered, or for the purpose of escaping capture by an enemy,

shall be liable in respect of each such offence to a fine which may extend to one thousand rupees.

[1] 42. The master of any ship on which any of the marks or lines prescribed by or under this chapter is inaccurately placed so as to be likely to mislead, who does not forthwith cause such inaccuracy to be corrected, shall be liable to a fine which may extend to one thousand rupees.

Penalty on master for having misleading marks.

[1] 43. The provisions of this chapter as to load-lines shall not apply to ships coming from ports in the United Kingdom and having such lines fixed, marked and certified in accordance with the provisions of the law for the time being there in force, or to ships registered

Saving of ships marked in the United Kingdom.

Leg. Changes :—[1] Substituted by Act XVII of 1891.

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in a British possession and having such lines fixed, marked and certified in accordance with the provisions of an enactment passed by the Legislature of that possession, with respect to which enactment such a declaration as is mentioned in section 3 of the Merchant Shipping Act, 53 Vict., c. 9. 1890, has been made by an Order of Her Majesty in Council and is for the time being in force.

Supplemental Provisions.

Release of ship at any time by Local Government.

44. The Local Government may at any time, if satisfied that a ship detained under this chapter is not unsafe, order her to be released either upon or without any conditions.

Who may enforce detention of ship.

45. When under this chapter a ship is authorized or ordered to be detained, any commissioned officer on full pay in the naval or military service of Her Majesty, any commander or first officer of any of Her Majesty's Indian Government ships, or any Port-officer, Harbour-master, Conservator of a port or officer of customs may detain the ship.

Penalty for proceeding to sea after detention.

46. If any ship after such detention, or after service on the master of any notice of or order for such detention, proceeds to sea before she is released by competent authority, the master of the ship shall be punished with fine which may extend to one thousand rupees.

Penalty for carrying to sea officer in execution of his duty.

47. When a ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty, any person authorized under this chapter to detain or survey such ship, the owner and master of such ship shall each be liable to pay all expenses of, and incidental to, such person being so taken to sea, and shall also each be punished with fine which may extend to one thousand rupees.

When any owner or master is convicted of an offence under this section, the convicting Magistrate may enquire into and determine the amount payable on account of expenses by such owner or master under this section, and may direct that the same shall be recovered from him in manner provided for the recovery of fines.

Detained ship not to be released because British registry closed.

48. When a ship has been detained under this chapter, she shall not be released by reason of her British or British Indian register being subsequently closed.

Powers of person authorized to survey ship.

49. For the purposes of the survey of a ship under this chapter, any person authorized to make the same may go on board the ship and inspect the same, and every part thereof, and the machinery, equipments and cargo, and may require the unloading or removal of any cargo, ballast or tackle.

Certain persons to be deemed public servants.

50. Every Judge, assessor, officer or surveyor under this chapter shall be deemed to be a public servant within the meaning of the Indian Penal Code. XLV of 1860

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51. Where any order, notice, statement or document is required for the purpose of any provision of this chapter, to be served on the master of a ship, the same shall be served, where there is no master, on the owner of the ship, if he resides in the port where the ship is detained, or, if there is no owner residing there, on some agent of the owner residing there; or where such owner or agent is unknown or cannot be found, a copy of such order, notice, statement or document shall be affixed to the mast of the ship, and shall thereupon be deemed to be duly served.

Service of order, where there is no master or resident owner, etc.

52. Any such order, notice, statement or document may be served by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or, in the case of a master, by leaving it for him on board the ship with the person being or appearing to be in command or charge of the ship.

Order, etc., how to be served.

53. The Local Government may, from time to time, by notification in the official Gazette, delegate, either absolutely or subject to such conditions or restrictions as it thinks fit, to any body of Commissioners or trustees appointed for managing the affairs of a port, all or any of the powers, and require the said body to discharge all or any of the functions, of a Local Government under the foregoing sections of this Act, except the powers conferred by section 14, the power of preparing a list of assessors under section 15 and the power of making rules, and may cancel any such notification.

Delegation of powers to Port Commissioners, etc.

While any such notification remains in force, all costs and damages which would otherwise be recoverable under this Act by or from the Government shall be recoverable in like manner by or from such body and such body shall, notwithstanding anything to the contrary contained in any enactment now in force, credit or pay, as the case may be, the amount of any cost or damages so recovered to or from the funds held by them in trust as such body.

CHAPTER III.

DISTRESSED SEAMEN.

Chapter to be taken as part of Act I of 1852.

54. This chapter shall be read with, and taken as part of, Act No. I of 1859 (*for the amendment of the law relating to Merchant Seamen*).

Saving of provisions of Merchant Shipping Acts, 1854 and 1855.

17 & 18 Vict., c. 104.
18 & 19 Vict., c. 91.

But nothing in this chapter contained applies to seamen or apprentices to whom the provisions of section 211 of the Merchant Shipping Act, 1854, or of section 16 of the Merchant Shipping Act Amendment Act, 1855, apply.

In this chapter "Local authority" means such person as the Local Government may from time to time, subject to the control of the Governor General in Council, appoint by name or in virtue of his office to exercise the powers conferred, and to perform the duties imposed, on the local authority under this chapter.

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Power to suspend or dismiss. Every person so appointed may be suspended or dismissed by the Local Government which appointed him.

Relief of distressed seamen at Indian ports. 55. The local authority may, subject to the rules hereinafter mentioned, provide for the subsistence—

- (a) of all seamen and apprentices, being Native Indian subjects of Her Majesty who have been shipwrecked, discharged or left behind at any place in British India, whether from any British ship employed in the merchant service, or from any of Her Majesty's ships, or who have been engaged by any person acting either as principal or agent to serve in any ship belonging to any foreign Power, or to the subject of any foreign State, and who are in distress in any such place; and
- (b) of all seamen and apprentices not being Native Indian subjects who have been shipwrecked, discharged or left behind at any place in British India from any British ship registered in British India and who are in distress in any such place,

until such time as such authority is able to provide them with a passage as hereinafter provided.

Distressed seamen to be sent home on board British ship wanting seamen to make up its crew. 56. Subject as aforesaid, the local authority may cause such seamen or apprentices to be put on board some ship belonging to any subject of Her Majesty which is in want of men to make up its complement, and is bound—

- (a) in the case of seamen or apprentices who are Native Indian subjects of Her Majesty, to their home or to a port in British India near their home;
- (b) in the case of other British seamen or apprentices, to any port in the United Kingdom or the British possession to which they belong (as the case requires); and
- (c) in the case of seamen or apprentices not being subjects of Her Majesty, to such place as the local authority, subject to the control of the Governor General in Council, may in each case determine.

In default of such ship, on board of any ship. 57. In default of any such ship, the local authority may, subject as aforesaid, provide such seamen or apprentices with a passage in any ship (whether British or foreign) bound as aforesaid.

Name and other particulars with regard to seamen to be indorsed on agreement of British ship. 58. The local authority shall indorse on the agreement of any British ship on board of which any seaman or apprentice is sent under section 56 or section 57 the name of every person so sent on board thereof, with such particulars concerning the case as the Governor General in Council may from time to time by rule prescribe.

59. The master of every British ship bound as aforesaid shall receive and afford a passage and subsistence to all seamen and apprentices whom he is required to take on board his ship under the provisions of section 56 or section 57, not exceeding one for every fifty tons burden, and shall, during the passage, provide every such seaman or apprentice with a proper berth or sleeping-place effectually protected against sea and weather.

Master of British ship compelled to convey and give subsistence to such seamen.

60. If the master of any such ship fails or refuses to receive on board his ship, or to give a passage or subsistence to, or to provide for, any such seaman or apprentice contrary to the provisions of section 59, he shall, for each seaman and apprentice with respect to whom he so fails or refuses, be punished with fine which may extend to one thousand rupees, or, when he is tried at any place beyond the limits of British India, to the equivalent of one thousand rupees in the currency of such place.

Penalty for refusing so to do.

61. When any master of a British ship has conveyed a seaman or apprentice in excess of the number (if any) wanted to make up the complement of his crew to any place in accordance with the requisition of a local authority under this chapter, such master shall be entitled to be paid by the Secretary of State for India in Council in respect of the subsistence and passage of such seaman or apprentice such sum per diem as the Governor General in Council from time to time appoints :

Conditions under which master may claim payment.

Provided that no payment shall be made under this section except on the production of the following documents (that is to say) :—

- (a) a certificate signed by the local authority by whose direction such seaman or apprentice was received on board, specifying the name of such seaman or apprentice, and the time when he was received on board ; and
- (b) a declaration in writing by such master made and verified in manner hereinafter provided, and stating—
 - (1) the number of days during which such seaman or apprentice received subsistence and was provided for as aforesaid on board his ship ;
 - (2) the number of men and boys forming the complement of his crew ;
 - (3) the number of seamen and apprentices employed on board his ship during the time such seaman or apprentice was on board ; and
 - (4) every variation (if any) of such number.

The declaration required by this section shall, in the case of a ship conveying Native Indian subjects of Her Majesty to a port in British India, be made before a shipping-master or such other officer as the Local Government may appoint. In other cases such declaration shall be made and verified in the same manner as declarations made under

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Wages and expenses incurred in respect of distressed seamen to be charged on ship to which they belong in certain cases.

62. (a) If any seaman or apprentice, being a Native Indian subject of Her Majesty and belonging to any British ship, is discharged or left behind at any place in British India without full compliance on the part of the master with all the provisions in that behalf of the law for the time being in force, and becomes distressed and is relieved under the provisions of this chapter; or

(b) if any such seaman or apprentice, after having been engaged by any person (whether acting as principal or agent) to serve in any ship belonging to any foreign power or to the subject of any foreign power, becomes distressed and is relieved as aforesaid; or

(c) if any seaman or apprentice belonging to any British ship registered in British India, and not being a Native Indian subject of Her Majesty, is discharged or left behind at any place in British India without full compliance as aforesaid, and becomes distressed and is relieved as aforesaid,

the wages (if any) due to such seaman or apprentice, and all expenses incurred for his subsistence, necessary clothing, conveyance home, and, in case he should die before reaching home, for his burial, shall be a charge upon the ship, whether British or foreign, to which he so belonged as aforesaid.

63. All such wages and expenses shall be recoverable with costs

Mode of recovering such wages and expenses.

either from the master of such ship or from the person who is owner thereof for the time being, or, in the case of an engagement for service in a foreign ship, from such master or owner, or from the person by whom such engagement was so made, in the same manner as other debts due to the Secretary of State for India in Council, or in the same manner and by the same form and process in which wages due to the seaman or apprentice would be recoverable by him.

Local Government may authorize persons to recover same.

64. The Local Government may from time to time, by notification in the official Gazette, authorize, either generally or specially, such persons as it thinks fit to sue for any such wages and expenses and recover the same.

Such persons to be deemed persons filling a public office.

And every person so authorized shall be entitled to sue and recover accordingly, and shall be deemed to be a person filling a public office within the meaning of the Indian Evidence Act, 1872, section 57, I of 1872. clause 7.

65. When any such wages and expenses are due to or in respect of a seaman or apprentice mentioned in section 62, clause (c),

Board of Trade may recover such amount from master or owner in certain cases.

they may, instead of being recovered by a person authorized under section 64, be recovered by the Board of Trade in manner provided by the Merchant Shipping Act, 1854, section 213, and when so recovered shall be paid by the said Board to the Secretary of State for India in Council.

State for India in Council.

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66. In all proceedings under this chapter, whether in India or elsewhere, the production of a certificate signed by the local authority by which any seaman or apprentice named therein was relieved, or any expenses were incurred, under this chapter, to the effect that such seaman or apprentice was in distress, and that such expenses were incurred in respect of such seaman or apprentice, shall be sufficient evidence that such seaman or apprentice was relieved, conveyed home or buried (as the case may be) at the expense of the revenues of India.

67. The Governor General in Council may, from time to time, make rules to determine under what circumstances and subject to what conditions seamen or apprentices may be relieved and provided with passages under this chapter, and generally to carry out the provisions of this chapter

Power of Governor General in Council to make rules.

All such rules shall be published in the Gazette of India, and shall thereupon have the force of law.

CHAPTER IV.

SHIP SURVEYORS.

68. The Local Government may, from time to time, appoint competent persons for the [1] purpose of examining the qualifications of persons desirous of practising the profession of a ship surveyor at any port in the territories administered by such Government, and, subject to the control of the Governor General in Council, make rules—

Local Government to appoint examiners,
and to make rules as to qualification, etc., of ship surveyors.

- (a) for the conduct of such examinations and the qualifications to be required,
- (b) for the grant of certificates to qualified persons,
- (c) for the fees to be paid for such examinations and certificates,
- (d) for holding enquiries into charges of incompetency and misconduct on the part of holders of such certificates, and
- (e) for the suspension and cancelment of such certificates.

69. No person shall, in any port in which there is a person exercising the profession of a ship surveyor and holding a certificate granted under section 68, exercise such profession in such port unless he holds a certificate granted under that section :

Publication of rules. All such rules shall be published in the official Gazette, and shall thereupon have the force of law.

69. No person shall, in any port in which there is a person exercising the profession of a ship surveyor and holding a certificate granted under section 68, exercise such profession in such port unless he holds a certificate granted under that section :

No person to practise as ship surveyor unless qualified.

Provided that nothing herein contained shall prevent any person employed by Lloyd's Register of British and Foreign shipping or Bureau Veritas from discharging any of the duties of such employment, or apply to any person specially exempted by the Local Government from the operation of this section.

Surveyors of Lloyd's and Veritas.

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70. Any person exercising the profession of a ship surveyor in contravention of the provisions of section 69 shall be punished with fine not exceeding one thousand rupees, and shall be incapable of maintaining any suit for any fee or reward for anything done by him in such exercise of such profession.

Penalty for practising as ship surveyor without certificate.

CHAPTER V.

RECEIVERS OF WRECK.

71. In this chapter "wreck" includes the "Wreck" defined. following when found in the sea or any tidal water or on the shores thereof, that is to say:—

goods which have been cast into the sea and then sink and remain under water;

goods which have been cast or fall into the sea and remain floating on the surface;

goods which are sunk in the sea, but are attached to a floating object in order that they may be found again;

goods which are thrown away or abandoned; and

a vessel abandoned without hope or intention of recovery.

Savings. **[1] 72. [2] *** Nothing in this chapter shall be deemed to—

(a) affect the declaration of the twenty-third day of October, 1889, in the schedule to this Act, between the Government of the United Kingdom of Great Britain and Ireland and the Government of the French Republic, with reference to the disposal of the proceeds of wrecks on their respective coasts, that declaration having been made applicable to India, or

(b) affect section 29 of the Indian Ports Act, 1889, or entitle any person to salvage in respect of any property recovered by creeping or sweeping in contravention of that section.

73. The Local Government may, from time to time, by notification in the official Gazette, with the previous sanction of the Governor General in Council, appoint such person as it thinks fit to receive and take possession of wreck and to perform such duties connected therewith as are hereinafter mentioned, within such local limits as it may from time to time prescribe.

Appointment of receivers.

Persons so appointed shall be called receivers of wreck.

74. Any person finding and taking possession of any wreck within any local limits for which a receiver of wreck has been so appointed, **[3]** or bringing within such limits any wreck which has been found and taken possession of elsewhere^[3], shall as soon as practicable—

Rules to be observed by person finding wreck;

(a) if he be the owner thereof, give the receiver of wreck notice if he be the owner: writing of the finding thereof and of the marks by which such wreck is distinguished;

Leg Changes:—**[1]** Substituted by Act VI of 1891. **[2]** Repealed by Act XII of 1891. **[3]** Inserted by Act VI of 1891,

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if he be not the owner.

(b) if he be not the owner of such wreck, deliver the same to the receiver of wreck.

75. Whenever any wreck is found by the receiver of wreck or has been delivered to him in accordance with the provisions of section 74 by any person, not being the owner thereof, the Government or such other person so delivering such wreck, as the case may be, shall be entitled to receive a reasonable sum for salvage, having regard to all the circumstances of the case.

Disputes concerning amount of salvage.

Any dispute arising concerning the amount due under this section shall be determined by a Magistrate, upon application to him for that purpose by either of the disputing parties.

76. The receiver of wreck shall, on taking possession of any wreck, publish a notification, in such manner and at such place as the Local Government may from time to time prescribe in this behalf, containing a description of the same and the time at which and the place where the same was found.

Wreck may in certain cases be sold.

77. If after the publication of such notification the wreck is unclaimed,

or if the person claiming the same fails to pay the amount due for salvage and for charges incurred by the receiver of wreck in respect thereof,

the receiver of wreck may sell such wreck by public auction, if of a perishable nature, forthwith, and, if not of a perishable nature, at any period not less than six months after such notification as aforesaid.

78. On the realization of the proceeds of such sale, the amount due for salvage and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the balance shall be paid to the owner of the wreck, or, if no such person appear and claim the same, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same :

Provided that he makes his claim within one year from the date of the sale.

79. Any person omitting to give notice of the finding of, or to deliver, any wreck to the receiver of wreck as required by section 74 shall be punished with fine which may extend to one thousand rupees, and, in the case of omission to deliver any wreck, shall, in addition to such fine, forfeit all claim to salvage, and pay to the owner of such wreck if the same is claimed, or if the same is unclaimed to the Government, a penalty not exceeding twice the value of such wreck.

Penalty for failure to give notice of, or to deliver, wreck to the receiver of wreck.

CHAPTER VI.

INSPECTION OF SHIPS WITH REGARD TO LIGHTS AND FOG-SIGNALS.

80. Nothing in this chapter contained shall apply to any ship belonging to, or hired by, Her Majesty or the Secretary of State for India in Council or belonging to any foreign Prince or State.

Saving clause.

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81. The Local Government may, from time to time, appoint persons

Appointment of
inspectors of lights
and fog-signals.

to inspect, in any port, ships to which the regulations for preventing collisions at sea, issued under the provisions of the Merchant Shipping Act Amendment Act, 1862, or any other similar law for the time being in 25 & 26 Vict.,

force, may apply, for the purpose of seeing that such ships are properly c. 63.
provided with lights and with the means of making fog-signals, in pursuance of such regulations or law, and may suspend or remove any person so appointed.

Every person so appointed shall in the port for which he is appointed have, for the purposes of such inspection, the powers given to detaining-officers by section 11.

Notice of deficiency to be given to
master or owner by
such inspectors.

82. If any such person finds that any ship is not so provided, he shall give to the master or owner notice in writing pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same.

83. Every notice so given shall be communicated in such manner

Ship not to be
cleared by Customs-
collector till inspec-
tor certifies it is
properly provided
with lights, etc.

as the Local Government may direct to the Customs-collector at any port from which such ship may seek to clear; and no Customs-collector to whom such communication is made shall grant such ship a port-clearance or allow her to proceed to sea without a certificate under the hand of some person appointed as aforesaid, to the effect that the said ship is properly

provided with lights and with the means of making fog-signals in pursuance of the said regulations or law.

CHAPTER VII.

MISCELLANEOUS.

84. Every offence punishable under Chapter II, Chapter III or

Offences triable
where offender
found

Chapter V may be tried in any district or presidency-town in which the offender is found, as well as in any district or presidency-town in which it might be tried under the law relating to criminal procedure for the

time being in force.

[1] 85. The provisions of this Act for the prevention of the over-

Application of
provisions respect-
ing over-loading and
deck and load lines
to foreign ships.

loading and improper loading of British ships and for the marking of deck and load lines on British Indian and British ships shall, with the exception of sub-sections (2) and (3) of section 35, apply to foreign ships also when in ports of British India, unless such foreign ships, if in ports of the United Kingdom, would

be entitled to the benefit of a direction of His Majesty in Council under section 445 of the Merchant Shipping Act, 1894 :

57 & 58 Vict.,

Provided that nothing in this section shall apply to any foreign ship c. 60.
not bound to a port in British India which comes into any port in British India for any purpose other than the purpose of embarking or

Leg. Changes:—[1] Substituted by Act XVIII of 1908.

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landing passengers or taking in or discharging cargo or taking in bunker-coal :

Provided also that in the case of detention of a foreign ship the application of the provisions of this Act shall be subject to the following modifications, namely :—

- (i) a copy of the order for the provisional detention of the ship shall be forthwith served on the Consular officer for the country to which the ship belongs at or nearest to the port in which such ship is detained ;
- (ii) the Consular officer, on the request of the owner or master of the ship, may require that the person appointed by the Local Government under section 8 to survey the ship shall be accompanied by such person as the consular officer may select, and in that case, if the surveyor and that person agree, the Local Government shall cause the ship to be detained or released accordingly ; but if they differ, the Local Government may act as if the requisition had not been made, and the owner and master shall have the like appeal to a Court of Survey touching the report of the surveyor as is hereinbefore provided in the case of a British ship ; and
- (iii) where the owner or master of the ship appeals to the Court of Survey, the Consular officer, on his request, may appoint a competent person to be assessor in the case in lieu of the assessor who, if the ship were a British ship, would be appointed otherwise than by the Local Government.

THE SCHEDULE.

(See section 72.)

Declaration between the Government of the United Kingdom of Great Britain and Ireland and the Government of the French Republic, with reference to the disposal of the proceeds of Wrecks on their respective Coasts.

The Government of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and the Government of the French Republic, desiring to regulate by a new Agreement questions relative to the disposal of the proceeds of wrecks on the coasts of the two States, have agreed to replace the Declaration signed at London on the 16th June, 1879, by the following arrangements :—

ARTICLE I.

When any ship belonging to the subjects of one of the two Contracting States is wrecked or stranded on the coast of the other, the competent local authorities shall, with as little delay as possible, bring the fact to the knowledge of the Consul General, Consul, Vice-Consul or Consular Agent nearest to the spot where the wreck or stranding has taken place.

ARTICLE II.

All operations relative to the salvage of British ships which may be wrecked or stranded on the coasts of France shall be directed by the Consuls General, Consuls, Vice-Consuls or Consular Agents of Great Britain, and reciprocally the French Consuls General, Consuls, Vice-Consuls

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and Consular Agents shall direct all operations relative to the salvage of ships of their nation wrecked or stranded on the coasts of Great Britain.

ARTICLE III.

If the owners of the ship and cargo, or their duly authorized representatives, shall be present and shall claim it, the Consuls General, Consuls, Vice-Consuls and Consular Agents shall hand over to them the conduct of the salvage operations after requiring the deposit of the ship's papers, as well as the reimbursement of the expenses already defrayed, and a sufficient guarantee for those incurred before the operations were handed over, and which may not have been already settled.

ARTICLE IV.

The intervention of the local authorities shall only take place in the two countries for the purpose of assisting the Consular authority, of maintaining order, of securing the interests of the salvors if they are strangers to the ship-wrecked crews, and of assuring the due execution of the arrangements to be carried out for the entry and departure of the merchandise saved.

In the absence, and until the arrival, of the Consuls General, Consuls, Vice-Consuls or Consular Agents, the local authorities shall, moreover, take all necessary measures for the protection of the persons, and for the preservation of the articles which shall have been saved from the wreck.

This intervention shall not give rise to any charges with the exception of those which the salvage operations and the protection of the articles saved shall have rendered necessary, and those to which national ships would, under similar circumstances, be liable. These charges shall be paid according to the circumstances of the case, either by the Agents of the Consular service, or by their owners or their proxies.

In case absence, sickness or any other cause should prevent the Agents of the Consular service from seeing to the operations and the management of the salvage, the local authorities who may be charged with the operations and management in question shall be bound to remit to the aforesaid Agents the ship's papers and the net proceeds of the ship and the cargo.

ARTICLE V.

The merchandise and articles saved shall not be liable to any customs-duties, unless they are intended for home consumption, in which case they shall pay the same duties as they would have had to pay if they had been imported in national vessels.

ARTICLE VI.

The stipulations of the present Declarations shall be applicable to all the Colonies and foreign possessions of Her Britannic Majesty, excepting to those hereinafter named, that is to say, except to—

India.
The Dominion of Canada.
Newfoundland.
The Cape.
Natal.
New South Wales.

Victoria.
Queensland.
Tasmania.
South Australia.
Western Australia.
New Zealand.

Merchant Shipping ACT V OF 1883 (MERCHANT SHIPPING).

Provided always that the stipulations of the present Declaration shall be made applicable to any of the abovenamed Colonies or foreign possessions on whose behalf notice to that effect shall have been given by Her Britannic Majesty's Representative to the French Republic within one year from the date of the signature of the present Declaration.

The stipulation of the present Declaration shall be applicable to all the Colonies and foreign possessions of France.

ARTICLE VII.

The present Declaration shall come into operation three months after the date of its signature, and shall remain in force until the expiration of one year from the day on which either party may give notice of its intention to terminate it.

In witness whereof, the undersigned Plenipotentiaries, His Excellency the Earl of Lytton, Ambassador of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Excellency M. Eugene Spuller, Minister for Foreign Affairs, have signed the present Declaration, and have affixed thereto their seals.

Done at Paris, this twenty-third day of October, 1889.

(L. S.) LYTTON.

(L. S.) E. SPULLER.

THE INDIAN MERCHANT SHIPPING ACT, 1883.

(ACT V OF 1883.)

[Passed on the 23rd February, 1883.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1883	V	Indian Merchant Shipping ...	Rep. in pt., Act X of 1889. " " & Am., Act VI of 1891. " " Act XII of 1891. " " Act VI of 1900.

An Act for the further amendment of the law relating to Merchant Shipping.

WHEREAS it is expedient to amend the law relating to investigation into casualties affecting ships and charges against masters, mates and engineers ;

and whereas it is also expedient to provide, in other respects hereinafter appearing, for the regulation and control of Merchant Shipping ;

S. 6 ACT V OF 1883 (MERCHANT SHIPPING). **Merchant Shipping**

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

- Short title.** 1. (1) This Act may be called the Indian Merchant Shipping Act, 1883.
- Extent.** (2) It extends to the whole of British India ;
- Commencement.** (3) and it shall come into force on the first day of January 1884.
2. (1) The Indian Merchant Shipping Act, 1875, and Act XIII of IV of 1875. 1878 (*an Act to provide for the recovery in British India of wages due to, and expenses incurred in respect of, certain seamen and apprentices, and to amend the Indian Merchant Shipping Act, 1875, and the Indian Ports Act, 1875*), are hereby repealed.
- Repeal of enactments.**
- (2) But all [1] * * officers appointed, powers conferred, investigations held, certificates cancelled or suspended, agreements made and persons authorized under the said Acts or either of them, shall be deemed to have been respectively [1] * * appointed, conferred, held, cancelled or suspended, made and authorized under this Act.
- Definitions.** 3. In this Act—
- “ship” includes every description of vessel used in navigation not propelled by oars ; and
- “master” means any person (except a pilot or harbour-master) having for the time being control or charge of a ship.
- 4 (1) Nothing in this Act shall affect the powers conferred by section 240 of the Merchant Shipping Act, 1854, or by section 80 of Act I of 1859 (*for the amendment of the law relating to Merchant Shipping*), on Courts having admiralty jurisdiction in India. 17 & 18 Vict. c. 104.
- Saving and provision as to powers for removal of master.**
- (2) The powers conferred by the last-mentioned enactment may, at any port in British India where there is no Court having admiralty jurisdiction, be exercised by the principal Court of ordinary criminal jurisdiction at that port.

CHAPTER II.

INVESTIGATIONS INTO SHIPPING CASUALTIES.

5. Nothing in this Chapter shall apply to any ship belonging to, or in the service of, Her Majesty or of the Government of India, or belonging to any foreign Prince or State.
- Chapter not to apply to certain ships.**
- Report of casualties to be made to Local Government.** 6. (1) Whenever any Magistrate, or any officer appointed by the Local Government in this behalf, receives credible information that—

- (a) any ship has been lost, abandoned, stranded or materially damaged on or near the coasts of British India ; or

Leg. Changes :—[1] Repealed by Act XII of 1891.

- (b) by reason of any casualty happening to, or on board of, any ship on or near those coasts, loss of life has ensued ; or
- (c) any ship has caused loss or material damage to any other ship on or near those coasts ; or
- (d) any such loss, abandonment, stranding, damage or casualty has happened elsewhere to, or on board of, any British ship, and any competent witnesses thereof have arrived or are to be found at any place in British India ; or
- (e) any British ship is supposed to have been lost, and any evidence can be obtained in British India as to the circumstances under which she proceeded to sea or was last heard of ;

he shall forthwith report in writing the information to the Local Government.

(2) In the cases mentioned in clauses (a), (b) and (c), the master, pilot, harbour-master, or other person in charge of the ship, or (where two ships are concerned) in charge of each ship, at the time of the loss, abandonment, stranding, damage or casualty, and

in cases under clause (d), where the master of the ship concerned, or (except in the case of a loss), where the ship concerned, proceeds to any place in British India from the place where the loss, abandonment, stranding, damage or casualty has occurred, the master of the ship,

shall, on arriving in British India, give immediate notice of the loss, abandonment, stranding, damage or casualty to the nearest Magistrate, or, when he arrives at a port in British India, to the officer appointed as aforesaid at that port.

(3) Any person bound to give notice under this section and wilfully failing to give the same shall be punished with fine which may extend to five hundred rupees, and, in default of payment [1] with simple imprisonment [1] for a term which may extend to three months.

[2] (4) The Magistrate or other officer whose duty it is under sub-section (1) to report to the Local Government such information as is referred to in that sub-section shall be deemed to be a public-servant, and shall have all the powers which an Inspector appointed under section 14 of the Merchant Shipping Act, 1854, has under clauses (1) to (5) of section 15 of that Act, that is to say :—

17 & 18 Vict.,
c. 104.

- (i) he may go on board any ship, and may inspect the same or any part thereof, or any of the machinery, boats, equipments or articles on board thereof, to which the provisions of this Act apply, not unnecessarily detaining or delaying her from proceeding on any voyage ;
- (ii) he may enter and inspect any premises the entry or inspection of which appears to him to be requisite for the purpose of the report which he is directed to make ;
- (iii) he may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and

Leg. Changes :—[1] Substituted by Act XII of 1891. [2] Added by Act VI of 1891.

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examine for such purpose, and may require answers or returns to any inquiries he thinks fit to make ;

- (iv) he may require and enforce the production of all books, papers or documents which he considers important for such purpose ;
- (v) he may administer oaths, or may, in lieu of requiring or administering an oath, require any person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

[1] (5) The word "coasts" in this section includes the coasts of creeks and tidal rivers.

7. [2] (1) If the Local Government to which the report prescribed by the last foregoing section has been made or within whose territories any competent witnesses of any such loss, abandonment, stranding, damage or casualty as is described in clause (a), (b), (c) or (d) of sub-section (1) of the same section have arrived or are to be found or any evidence of such supposed loss as is described in clause (e) of the same sub-section can be obtained, is of opinion that a formal investigation into the facts mentioned in any of the said clauses is requisite or expedient, such Local Government may appoint a special Court, consisting of not less than two nor more than four persons, and direct that Court to make the investigation, and may fix the place for making the same^[2].

Power for Local Government to appoint Special Court of investigation.

(2) One of the members of the Court shall be a Magistrate acting in or near the place where the investigation is made ; another shall be some person conversant with maritime affairs ; and the other or others (if any) shall be conversant with either maritime or mercantile affairs.

8. Every Court having admiralty jurisdiction in British India, and the principal Court of ordinary criminal jurisdiction at every port of British India where there is no Court having admiralty jurisdiction, is hereby authorized, when so directed by the Local Government ^[3] or by such officer as the Local Government has empowered in this behalf^[3], to make the investigation referred to in section 7.

Power for other Courts to hold investigations into casualties when so directed.

9. (1) Any Court making an investigation under section 7 or section 8 may inquire into any charge of incompetency or misconduct arising, in the course of the investigation, against any master, mate or engineer, as well as into any charge of a wrongful act or default on his part causing any such loss, abandonment, stranding, damage or casualty as aforesaid.

Power for Court of investigation to inquire into charges against masters, mates and engineers.

(2) In every case in which any such charge, whether of incompetency or misconduct, or of a wrongful act or default, as aforesaid, arises against

Leg. Changes :—[1] Added by Act VI of 1891. [2] Substituted by Act VI of 1891. [3] Inserted by Act VI of 1891.

any master, mate or engineer in the course of an investigation, the Court shall, before the commencement of the inquiry, cause to be furnished to him a copy of the report or statement of the case upon which the investigation has been directed.

10. (1) If the Local Government has reason to believe that there are grounds for charging any master, mate or engineer, holding a certificate granted by the Board of Trade or a Local Government, with incompetency or misconduct, otherwise than in the course of an investigation under section 7 or section 8, it may transmit a statement of the case to any Court mentioned in section 8, at or nearest to the place at which it may be convenient for the parties and witnesses to attend, and may direct that Court to make an investigation into that charge.

Power for Local Government to direct investigation into charges of incompetency or misconduct.

(2) Before commencing the investigation, the Court shall cause the master, mate or engineer so charged to be furnished with a copy of the statement transmitted by the Local Government.

11. For the purpose of an investigation under this chapter into any charge against a master, mate or engineer the Court may summon him to appear, and shall give him full opportunity of making a defence either in person or otherwise.

Person accused to be heard.

12. For the purpose of any investigation under this Chapter, the Court making the investigation, so far as relates to compelling the attendance and examination of witnesses and the production of documents and the regulation of the proceedings, shall have—

Powers of Courts as to evidence and regulation of proceedings.

(a) if the Court is a special Court—the same powers as are exercisable by the principal Court of ordinary criminal jurisdiction for the place at which the investigation is made ;

(b) if the Court is a Court having admiralty jurisdiction or a principal Court of ordinary criminal jurisdiction—the same powers as are exercisable by that Court in the exercise of its admiralty or criminal jurisdiction (as the case may be).

13. (1) When any investigation involves, or appears likely to involve, any question as to the cancelling or suspension of the certificate of a master, mate or engineer, the Court making the investigation shall constitute as its assessors for the purpose of the investigation two persons having experience in the merchant service ; and in every other investigation the Court making it may, if it thinks fit, constitute as its assessor for the purposes of the investigation any person conversant with maritime affairs and willing to act as its assessor.

Assessors.

(2) The assessors shall attend during the investigation and deliver their opinions in writing, to be recorded on the proceedings. But the exercise of all powers conferred on the Court by this Act or any other enactment for the time being in force shall rest with the Court.

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14. (1) If any Court making an investigation under this Chapter thinks it necessary for obtaining evidence that any person should be arrested, it may issue a warrant for his arrest, and may, for the purpose of effecting the arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the Local Government) to enter any vessel.

Power to arrest witnesses and cause entry and detention of vessels.

(2) Any officer so authorized may, for the purpose of enforcing the entry, call to his aid any officers of police or customs, or any other persons, and may seize and detain the vessel, for such time as is reasonably necessary to effect the arrest; and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, section 186.

XLV of 1860.

(3) No person shall be detained by virtue of this section for more than forty-eight hours.

15. (1) Whenever, in the course of any such investigation, it appears that any person has committed within the jurisdiction of any Court in British India an offence punishable under any law in force in British India, the Court making the investigation may (subject to such rules consistent with this Act as the High Court may from time to time prescribe) cause him to be arrested, or commit him or hold him to bail to take his trial before the proper Court, and may bind over any person to give evidence at the trial, and may, for the purposes of this section, exercise all the powers of a Magistrate of the first class or of a Presidency Magistrate.

Power to commit for trial and bind over witnesses.

[1] * * * * *

16. (i) Whenever, in the course of any such trial, the testimony of any witness is required in relation to the subject-matter, any deposition previously made by him in relation to the same subject-matter before any Court making an investigation under this Chapter shall, if authenticated by the signature of the Magistrate or presiding Judge, be admissible in evidence on proof—

Depositions.

(a) that the witness cannot be found within the jurisdiction of the Court before which the trial is held; and

(b) that it was made in the presence of the person accused and that he had an opportunity of cross-examining the witness.

(2) A certificate by the Magistrate or presiding Judge that the deposition was made in the presence of the accused and that he had that opportunity shall, unless the contrary be proved, be sufficient evidence that it was so made and that he had that opportunity.

17. (1) The Court shall, in the case of all investigations under this Chapter transmit to the Local Government a full report of the conclusions at which it has arrived, together with the evidence.

Report by Court to Local Government.

Leg. Changes:—[1] Repealed by Act VI of 1900.

(2) In cases in which, under the Merchant Shipping Acts, 1854 to 1882, the Court is required to send a report to the Board of Trade, the report shall be sent through the Local Government, and the transmission of the report to the Local Government shall be a sufficient compliance with this section.

CHAPTER III.

SUSPENSION AND CANCELLATION OF CERTIFICATES AND GRANT OF FRESH CERTIFICATES.

18. Nothing in this Act shall affect the powers conferred by the Merchant Shipping Acts, 1854 to 1882, on the Courts conducting the investigations under sections 7, 8, 9, and 10 of this Act, to cancel or suspend certificates granted under any of the said Merchant Shipping Acts, or certificates to which the provisions of any such act have been made applicable under the Merchant Shipping (Colonial) Act, 1869.

32 & 33 Vict.,
c. 11.

19. (1) When any such Court cancels or suspends any such certificate, the Local Government may, if it thinks fit, and if it is so empowered by any enactment of a British Indian legislature for the time being in force, grant under that enactment, but without examination, to the holder of the certificate, when the certificate is a certificate as master, a certificate as mate, and, when the certificate is a certificate as mate or engineer, a certificate as mate or engineer, as the case may be, of a grade lower than that which he held at the time of the cancellation or suspension.

(2) A certificate so granted shall have the same effect as if it had been granted after examination, but shall not have the effect of a certificate granted under the provisions of the Merchant Shipping (Colonial) Act, 1869, or of any Order in Council under that Act.

32 & 33 Vict.,
c. 11.

(3) The Local Government may act under this section either in pursuance of a recommendation from the Court, or of its own motion.

20. Any certificate (whether of competency or service) which has been granted by any Local Government to any master, mate or engineer, but has not been granted under the provisions of the Merchant Shipping (Colonial) Act, 1869, or of any Order in Council under the said Act, may be suspended or cancelled, by that or any other Local Government, in the following cases, that is to say :—

32 & 33 Vict.,
c. 11.

Power for Local Government to suspend or cancel certificates in certain cases.

(a) [1] *

(b) If, on any investigation made under the Merchant Shipping Acts, 1854 to 1882, or on any investigation made by any Court or tribunal for the time being authorized by the legislative authority in any British possession to make inquiry into charges of incompetency or misconduct on the part of masters,

S. 24 ACT V OF 1863 (MERCHANT SHIPPING)., Merchant Shipping

mates or engineers of ships, or as to shipwrecks or other casualties affecting ships, the Court or tribunal reports that the master, mate or engineer is incompetent, or has been guilty of any gross act of misconduct, drunkenness or tyranny, or that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by his wrongful act or default,

- (c) if he is proved to have been convicted of any offence which, if committed in British India, would be non-bailable, or, if committed in England, would be a felony, and
- (d) if (in case of a master) he has been superseded by the order of any Admiralty Court, or of any Naval Court constituted as provided by the Merchant Shipping Act, 1854, or by any other law for the time being in force,

17 & 18 Vict.,
c. 104.

[1]

21. Every master, mate or engineer whose certificate is cancelled or

Obligation to
deliver up cancelled
or suspended certi-
ficate.

suspended under section 20 shall deliver it to the Shipping Master or to such other person as the Local Government which cancelled or suspended the certificate directs, and in default of such delivery shall for each offence be punished with fine which may extend

to five hundred rupees.

22. If the Local Government which cancels or suspends, under

Report to other
Local Governments.

section 20, a certificate of a master, mate or engineer is not the Local Government that granted the same, the Local Government so cancelling or suspending the

certificate shall report the proceedings, and the fact of cancellation or suspension, to the Local Government which granted the certificate.

23. Every Local Government cancelling or suspending under

Report to Board
of Trade.

section 20 the certificate of a master, mate or engineer shall, as soon as may be practicable, report to the Board of Trade the fact of such cancellation or suspension.

24. (1) Any Local Government may at any time revoke any order

Power to revoke
cancellation or sus-
pension and grant
new certificate.

of cancellation or suspension which it may have made under section 20, or grant without examination, to any person whose certificate it has so cancelled, a new certificate of the same or of any lower grade.

(2) A certificate so granted shall have the same effect as if it had been granted after examination, but shall not have the effect of a certificate granted under the provisions of the Merchant Shipping (Colonial) Act, 1869, or of any Order in Council under the said Act.

32 & 33 Vict.,
c. 11.

(3) A certificate of competency for a home-trade ship under Act I of 1859 shall be deemed, for the purposes of this section, to be of a lower grade than a certificate of competency for a foreign-going ship under the same Act.

Leg. Changes :—[1] Repealed by Act VI of 1891.

Merchant Shipping ACT V OF 1883 (MERCHANT SHIPPING). S. 24-A

32 & 33 Vict.,
c. 11.

Power to Court to
suspend or cancel
certificates granted
by Local Govern-
ment.

[1] 24-A. (1) Notwithstanding anything in the foregoing provisions of this Act, a certificate (whether of competency or service) which has been granted by any Local Government to a master, mate or engineer, but has not been granted under the provisions of the Merchant Shipping (Colonial) Act, 1869, or of any Order in Council under the said Act may, if a Court conducting an investigation

under this Act finds that the loss, stranding or abandonment of or damage to any ship, or loss of life, has been caused by the wrongful act or default of the master, mate or engineer, or that he is incompetent or has been guilty of any gross act of drunkenness, tyranny or other misconduct, be cancelled or suspended by the Court :

Provided that the Court shall not cancel or suspend a certificate unless the holder of the certificate was furnished before the commencement of the investigation with the copy of the report or statement required by section 9 or section 10, as the case may be.

(2) At the conclusion of the investigation, or as soon afterwards as possible, the Court shall state in open sitting the decision to which it may have come with respect to the cancelment or suspension of any certificate.

(3) A master, mate or engineer whose certificate has been cancelled or suspended by the Court shall deliver the certificate to the Court, and the Court shall forward it to the Local Government, together with the report which it is required by section 17, sub-section (1), to transmit to that Government.

(4) A master, mate or engineer failing to deliver a certificate as required by sub-section (3) shall be punished with fine which may extend to five hundred rupees.

(5) The duties imposed and powers conferred by sections 22, 23 and 24 on the Local Government which cancels or suspends a certificate shall, when a Court has under this section cancelled or suspended a certificate, be performed and exercised by the Local Government to which the Court has forwarded the certificate under sub-section (3) as if such Local Government had itself cancelled or suspended the certificate under section 20.

CHAPTER IV.

AGREEMENTS WITH SEAMEN.

Chapter to be read
with Act I of 1859.

25. This Chapter shall be read with, and taken as part of, Act I of 1859.

26. The master of every ship, except ships of a burden not exceeding three hundred tons employed only in the home-trade, shall enter into an agreement with every seaman whom he engages in, and carries to sea from, any port in British India as one of his crew, in the manner hereinafter mentioned.

Masters to enter
into agreements.

27. (1) Every such agreement shall be in a form sanctioned by the Governor General in Council, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the

Form and con-
tents of agreement.

Leg. Changes :—[1] Added by Act VI of 1891.

S. 29 ACT V OF 1883 (MERCHANT SHIPPING). Merchant Shipping

same, and shall contain the following particulars as terms thereof, that is to say :—

- (a) either the nature and, as far as practicable, the duration of the intended voyage or engagement, or the maximum period of the voyage or engagement, and the places or parts of the world, if any, to which the voyage or engagement is not to extend ;
- (b) the number and description of the crew, specifying how many are engaged as sailors ;
- (c) time at which each seaman is to be on board or to begin work ;
- (d) the capacity in which each seaman is to serve ;
- (e) the amount of wages which each seaman is to receive ;
- (f) a scale of the provisions which are to be furnished to each seaman ; and
- (g) any regulations as to conduct on board, and as to fines, short allowance of provisions or other lawful punishments for misconduct, which have been sanctioned by the Governor General in Council as regulations proper to be adopted, and which the parties agreed to adopt.

(2) Every such agreement shall be so framed as to admit of stipulations to be adopted at the will of the master and seaman in each case (not being inconsistent with the provisions of any enactment for the time being in force relating to Merchant Shipping), as to advance of wages and supply of warm clothing, and may contain any other stipulations which are not contrary to law.

28. (1) In the case of such agreements with lascars or other Native seamen, the scale of the provisions agreed to be furnished to each of such seamen shall not be less than a scale to be, from time to time, fixed and published by the Local Government with the previous sanction of the Governor General in Council.

Scale of provisions to be furnished to lascars.

(2) Any master entering into an agreement with any lascar or other Native seaman for a scale of provisions less than the scale so fixed and published shall be punished with fine which may extend to two hundred rupees.

29. (1) Whenever it is agreed that the service of any lascar or other Native seaman shall end at any port not in British India, the agreement shall, in addition to the particulars specified in section 27, contain a stipulation that fit employments shall be provided for him on board some other ship bound to the port at which he was shipped, or such other port in British India, as may be agreed on ; or

Stipulation where lascars are shipped.

that a passage shall be provided for him to some port in British India free of charge, or on such other terms as may be agreed on.

(2) Every such stipulation shall be signed by the owner of the ship, or by the master on his behalf.

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(3) In this section the word "seaman" shall include also any Native of British India carried to sea from any port in British India as one of the crew of a ship.

30. If the master of any ship belonging to the United Kingdom or any British possession has an agreement with his crew, made in due form according to the law of the place to which the ship belongs, or in which her crew were engaged, and engages a single seaman, not being a lascar or other Native seaman, in any port in British India, the seaman may sign the agreement so made, and it shall not be necessary for him to sign an agreement under this Act.

Forms for British or Colonial ships.

CHAPTER V.

HEALTH-OFFICERS.

31. [1] *Addition to Act XII of 1875.*

CHAPTER VI.

MISCELLANEOUS.

32. (1) Where any wages or expenses recoverable under section 213 of the Merchant Shipping Act, 1854, or under section 16 of the Merchant Shipping Act Amendment Act, 1855, are, under the same sections, a charge upon any ship, or recoverable from any master, owner or other person, within the jurisdiction of any Court in British India, the Governor General in Council may, from time to time, by notification in the Gazette of India, authorize, either generally or specially, such persons as he thinks fit to sue for and recover, in manner in the Merchant Shipping Act, 1854, section 213, provided, those wages or expenses.

17 & 18 Vict.,
c. 104.
18 & 19 Vict.,
c. 19.

17 & 18 Vict.,
c. 104.

(2) Every person so authorized shall be entitled to sue and recover accordingly in any such Court, and shall be deemed to be a person filling a public office within the meaning of the Indian Evidence Act, 1872, section 57, clause 7.

I of 1872.

Proceedings to be instituted in name of Secretary of State for India in Council.

33. All suits and proceedings under section 32 shall be instituted and carried on in the name of the Secretary of State for India in Council.

Amendment of section 10 of Act I of 1859.

34 In section 10 of Act I of 1859, for the words "Fees at the following rates shall be paid by all applicants for examination :—

For a certificate as master ...	...	... ten rupees
Ditto as mate ...	...	... five „ "

the following shall be substituted, namely :—"Fees at such rates as the Local Government may, from time to time, with the previous sanction of the Governor General in Council, fix in this behalf shall be paid by all applicants for examination."

Leg. Changes :— [1] Repealed by Act X of 1889, S. 2 and Sch. II.

Addition to section 11 of Act I of 1859. **36.** To section 11 of Act I of 1859 the following shall be added, namely :—

" Provided that the Local Government may, in any case in which it has reason to believe that such report has been unduly made, require, before granting a certificate, a re-examination of the applicant or a further inquiry into his testimonials and character."

Amendment of section 79 of Act I of 1859. **36.** For the last fifteen words of section 79 of Act I of 1859, the following shall be substituted, namely :—

" punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to two years, or with both."

Provisions as to examination, etc., of masters not to apply to certain ships. **37.** Sections 9 to 16 (both inclusive) of Act I of 1859 shall not apply to ships registered under Act X of 1841, and trading between ports in India and the Coasts of Arabia, when such ships are navigated and manned exclusively by Arabs, lascars or other Asiatic masters and seamen.

38. In sections 2, 15, 17 and 23 of the said Act X of 1841, for the words "on information in any Court of Her Majesty or the East India Company by the Advocates General of the respective Presidencies," "by information as aforesaid," "on information as aforesaid," "upon information as aforesaid" in each of the places where they occur the following words shall be substituted, namely :—"on conviction before a Presidency Magistrate or a Magistrate of the first class."

THE METAL TOKENS ACT, 1889.

(ACT I OF 1889.)

[*Passed on the 1st February, 1889.*]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1889	I	Metal Tokens	Rep. in pt., Act V of 1898. " Act X of 1914.

An Act for the Protection of Coinage and other Purposes.

WHEREAS it is expedient to prohibit the making, or the possession for issue, or the issue, by private persons of pieces of metal for use as money ;

And whereas it is also expedient to amend section 28 of the Indian XLV of 1860. Penal Code ;

It is hereby enacted as follows :—

Title, extent and commencement. **1.** (1) This Act may be called the Metal Tokens Act, 1889 ;

(2) It extends to the whole of British India ; [1] *

(3) [2] * * *

2. In this Act " issue " means to put a piece of metal into circulation for the first time for use as money in British India, such piece having been made in contravention

Definition. of this Act or brought into British India by sea or by land in contravention of any notification for the time being in force under section 19 of the VIII of 1878. Sea Customs Act, 1878.

Prohibition of making by private persons of pieces of metal to be used as money.

3. No piece of copper or bronze or of any other metal or mixed metal, which, whether stamped or unstamped, is intended to be used as money, shall be made except by the authority of the Governor General in Council.

Penalty for unlawful making, issue or possession of such pieces.

4. (1) In either of the following cases, namely :—

(a) if any person makes in contravention of the last foregoing section, or issues or attempts to issue, any such piece as is mentioned in that section,

(b) if, after the expiration of three months from the commencement of this Act, any person has in his possession, custody or control any such piece as is mentioned in the last foregoing section, with intent to issue the piece,

the person shall be punished,—

(i) if he has not been previously convicted under this section, with imprisonment which may extend to one year, or with fine, or with both ; or

(ii) if he has been previously convicted under this section, with imprisonment which may extend to three years, or with fine, or with both.

(2) If any person is convicted of an offence under sub-section (1), he shall, in addition to any other punishment to which he may be sentenced, forfeit all such pieces as aforesaid, and all instruments and materials for the making of such pieces, which may have been found in his possession, custody or control.

(3) If in the trial of any such offence the question arises whether any piece of metal or mixed metal was intended to be used or to be issued for use as money, the burden of proving that the piece was not intended to be so used or issued shall lie on the accused person.

Cognizance of offences under the last foregoing section.

5. (1) The offence of making, in contravention of section 3, any such piece as is mentioned in that section shall be a cognizable offence.

(2) Notwithstanding anything in the Code of Criminal Procedure, 1882, no other offence punishable under section 4 shall be a cognizable offence, or beyond the limits of a presidency-town be taken cognizance of

X of 1882.

Leg. Changes :—[1] The word " and " repealed by Act X of 1914. [2] Clause (3) repealed by Act X of 1914.

by any Magistrate, except a District Magistrate or Sub-divisional Magistrate, without the previous sanction of the District Magistrate or Sub-divisional Magistrate.

6. If at any time the Governor General in Council sees fit, by notification under section 19 of the Sea Customs Act, 1878, to prohibit or restrict the bringing by sea or by land into British India of any such pieces of metal as are mentioned in section 3, he may by the notification direct that any person contravening the prohibition or restriction shall be liable to the punishment to which he would be liable if he were convicted under this Act of making such pieces in British India, instead of to the penalty mentioned in section 167 of the Sea Customs Act, 1878, and that the provisions of sub-section (3) of section 4 and sub-section (1) of section 5, or of either sub-section, in relation to the offence of making such pieces shall, notwithstanding anything in the Sea Customs Act, 1878, apply, so far as they can be made applicable, to the offence of contravening the prohibition or restriction notified under section 19 of that Act.

7. [Addition to section 98, Act X of 1882.] Rep. by the Code of Criminal Procedure, 1898 (Act V of 1898).

Prohibition of receipt by local authorities and railways as money of metal which is not coin.

8. (1) No piece of metal which is not coin as defined in the Indian Penal Code shall be received as money by or on behalf of any railway-administration or local authority.

(2) If any person on behalf of a railway-administration, or on behalf of a local authority, or on behalf of the lessee of the collection of any toll or other impost leviable by a railway-administration or local authority, receives as money any piece of metal which is not such coin as aforesaid, he shall be punished with fine which may extend to ten rupees.

Amendment of section 28 of the Indian Penal Code.

9. For the *Explanation* to section 28 of the Indian Penal Code the following shall be substituted, namely:—

"*Explanation* 1.—It is not essential to counterfeiting that the imitation should be exact.

"*Explanation* 2.—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised."

THE INDIAN MINES ACT, 1901.

(ACT VIII OF 1901.)

[Passed on the 22nd March, 1901.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1901	VIII	Indian Mines ...	Am., Act IV of 1914.

An Act to provide for the Regulation and Inspection of Mines.

WHEREAS it is expedient to provide for the regulation and inspection of mines ; It is hereby enacted as follows :—

Preliminary.

Short title, extent and commencement. 1. (1) This Act may be called the Indian Mines Act, 1901 ;

(2) It extends to the whole of British India, including British Baluchistan, the Santal Parganas and the Pargana of Spiti ; and

(3) It shall come into force at once.

XII of 1887. Saving of Regulation XII, 1887. 2. Nothing in this Act shall be construed to affect the provisions of the Upper Burma Ruby Regulation, 1887.

Definitions. 3. In this Act, unless there is anything repugnant in the subject or context,—

(a) " agent," when used in relation to a mine, means any person appointed as the representative of the owner in respect of the management of the mine or of any part thereof, and as such superior to a manager under this Act :

(b) " child " means a person under the age of twelve years :

(c) a person is said to be " employed " in a mine who works, under appointment by or with the knowledge of the manager, whether for wages or not, in any mining operation, or in cleaning or oiling any part of any machinery used in or at the mine, or in any other kind of work whatsoever incidental to, or connected with, mining operations :

(d) " mine " includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven for commencing or opening any mine or for searching for or proving minerals, and all the shafts, levels, planes, works, machinery, tramways and sidings, both below ground and above ground, in and adjacent to and belonging to the mine ; but it does not include any pit, quarry or other excavation the depth of no part of which measured from the level of the adjacent ground exceeds twenty feet and no part of which extends beneath the superjacent ground :

- (e) "owner" when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof, and does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine subject to any lease, grant or license for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mine: but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability:
- (f) "prescribed" means prescribed by rules made under this Act: and
- (g) "shaft" includes pit.

Inspectors.

4. (1) The Governor General in Council shall, by notification in the Gazette of India, appoint a duly qualified person to be
 Inspectors. Chief Inspector of Mines throughout British India.

(2) The Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, appoint persons, qualified by experience, to be Inspectors of Mines within such local areas or for such groups or classes of mines as it may assign to them respectively.

(3) Every Inspector of Mines appointed under sub-section (2) shall, in the performance of his duties, be subordinate to the Chief Inspector of Mines appointed under sub-section (1) in such respects and to such extent as may be prescribed by the Governor General in Council.

(4) The Chief Inspector and every Inspector of Mines appointed under this section shall be deemed to be a public servant within the meaning of the Indian Penal Code, and shall be subordinate to such authority as the Governor General in Council or the Local Government, as the case may be, may direct. XLV of 1860.

(5) No Chief Inspector or Inspector of Mines shall be a partner or have any interest, direct or indirect, in any mine or mining rights in India.

(6) When rules are made under this Act, the Inspector of Mines shall give information to owners, agents and managers of mines, within the local area, or the group or class of mines, for which he has been appointed as to any rules which concern them respectively, and as to the places where copies of such rules may be obtained.

5. The District Magistrate may exercise such of the powers and
 Powers of District perform such of the duties of an Inspector of Mines as
 Magistrate. the Local Government may, by general or special order, direct:

Provided that nothing in this section shall be deemed to empower a District Magistrate to exercise any of the powers conferred by section 15 or section 21.

6. The Chief Inspector of Mines may, anywhere within British India, and an Inspector of Mines may, within the local area or with respect to the group or class of mines for which he is appointed,—

Powers of Inspectors of Mines.

- (a) make such examination and enquiry as he thinks fit in order to ascertain whether the provisions of this Act and of the rules and orders made thereunder are observed in the case of any mine;
- (b) enter, with such assistants (if any) as he thinks fit, inspect and examine any mine and any part thereof at all reasonable times by day or by night, but not so as unreasonably to impede or obstruct the working of the mine;
- (c) examine into, and make inquiry respecting, the state and condition of any mine or any part thereof, the ventilation of the mine, the sufficiency of the special rules for the time being in force in and at the mine and all matters and things connected with or relating to the safety of the persons employed in or about the mine;
- (d) order that any person shall not be employed in, or admitted to, or shall be removed from, a mine where there is ground for believing that his employment in or admission to or presence in such mine would be dangerous to himself or others: Provided that an appeal shall lie to such authority as the Governor General in Council or the Local Government, as the case may be, may direct from any order made under this clause, and that the order shall be complied with until the decision of such authority shall be received at the mine;
- (e) do all other things required of him by or under this Act.

7. Every owner, agent and manager of a mine shall furnish the Chief Inspector and every Inspector of Mines, on requisition, with the means necessary for making any entry, inspection, examination or inquiry in relation to the working of the mine under this Act.

Facilities to be afforded to Inspectors.

8. (1) All copies of, and extracts from, registers or other records appertaining to any mine, and all other information acquired by the Chief Inspector or an Inspector of Mines, or by any one assisting him, in the inspection of any mine under this Act, shall be regarded as strictly confidential.

Information acquired to be deemed official secrets within meaning of Act XV, 1889.

(2) If any such person discloses to any one, other than a Magistrate or an officer to whom he is subordinate, any such information as aforesaid without the consent of the Governor General in Council or the Local Government, as the case may be, he shall be guilty of a breach of official trust, and shall be punishable in the manner provided by section 4 of the Indian Official Secrets Act, 1889.

XV of 1889.

(3) No Court shall take cognizance of any offence under this section unless on a prosecution at the instance of the Governor General in Council, or the Local Government, or of a person aggrieved by the same.

Mining Boards and Committees.

9. (1) The Local Government may constitute for the Province, or for any part of the Province, or for any group or class of mines in the Province, a Mining Board consisting of—

- (a) a public officer, not being the Chief Inspector or an Inspector of Mines, nominated by the Local Government to act as chairman;
- (b) the Chief Inspector or the Inspector of Mines;
- (c) one other person, not being the Chief Inspector or an Inspector of Mines, nominated by the Local Government; and
- (d) two persons nominated by owners of mines or their representatives in such manner as the Local Government may direct.

(2) The chairman shall appoint a person to act as Secretary of the Board.

(3) The Local Government may give directions as to the payment of travelling expenses incurred by the chairman, secretary or any member of a Mining Board in the performance of his duty as such chairman, secretary or member.

10. (1) Where under this Act any question relating to a mine is referred to a Committee, the Committee shall consist of—

- (a) a chairman nominated by the Local Government or by such officer or authority as the Local Government may direct;
- (b) one or more persons qualified by experience to dispose of the question referred to the Committee and nominated by the chairman; and
- (c) one or more persons equal in number to the person or persons nominated under clause (b) and nominated by the owner, agent or manager of the mine concerned.

(2) The Inspector of Mines shall not serve as chairman or member of a Committee appointed under this section.

(3) No person employed in or in the management of the mine concerned shall serve as chairman or member of a Committee appointed under this section.

(4) Where an owner, agent or manager fails to exercise his power of nomination under sub-section (1), clause (c), the Committee may, notwithstanding such failure, proceed to inquire into and dispose of the matter referred to them.

(5) The Committee shall hear and record such information as the Chief Inspector or the Inspector of Mines or the owner, agent or manager of the mine concerned may place before them, and shall intimate their decision to the Chief Inspector or the Inspector of Mines and to the owner, agent or manager of the mine concerned, and shall report their decision to the Local Government, or, where a Mining Board has been constituted, to the Local Government through the Mining Board.

(6) On receiving such report the Local Government may, if the Inspector of Mines, or the owner, agent or manager, has lodged an

objection to the decision of the Committee, proceed to review such decision and to pass such orders in the matter as it may think fit.

(7) The Local Government may give directions as to the remuneration (if any) to be paid to the members of the Committee or any of them, and as to payment of the expenses of the inquiry, including such remuneration.

11. (1) A Mining Board constituted under section 9 or a Committee appointed under section 10 may exercise such of the powers of an Inspector of Mines as they may think it necessary or expedient to exercise for the purpose of deciding or reporting upon any matter referred to them.

Powers of Mining Boards and Committees.

(2) A Mining Board constituted under section 9 or a Committee appointed under section 10 shall have the powers of a Civil Court for the purpose of enforcing the attendance of witnesses and compelling the production of documents; and every person required by any such Committee to furnish information before it shall be deemed to be legally bound to do so within the meaning of section 176 of the Indian Penal Code.

XLV of 1860.

12. When the Local Government directs that the expenses of any inquiry conducted by a Mining Board constituted under section 9 or by a Committee appointed under section 10 are to be borne in whole or in part by the owner, agent or manager of the mine concerned, the amount so directed to be paid may be recovered on application by the Chief Inspector or the Inspector of Mines to a Magistrate having jurisdiction at the place where the mine is situate or where such owner, agent or manager is for the time being resident by the distress and sale of any moveable property within the limits of the Magistrate's jurisdiction belonging to such owner, agent or manager.

Recovery of expenses.

Mining Operations and Duties and Responsibilities of Owners, Agents and Managers.

13. (1) For every mine there shall be a manager, who shall have the prescribed qualifications.

Managers.

(2) The manager shall be responsible for the superintendence of all parts of the mine.

14. (1) The owner, agent and manager of every mine shall be responsible that all operations carried on in connection therewith are conducted in accordance with the provisions of this Act and the rules and orders made thereunder.

Duties and responsibilities of owners, agents and managers.

(2) In the event of any contravention of, or failure to comply with, any such provisions on the part of any person whomsoever, the owner, agent and manager shall each be liable to be found guilty of an offence against this Act, unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing the said provisions, to prevent such contravention or non-compliance, and that such contravention or non-compliance occurred without his consent.

15. (1) If, in any respect which is not provided against by any express provision of this Act, or of the rules or orders made thereunder, the Chief Inspector or any Inspector of Mines finds that any mine, or any part thereof, or any matter, thing or practice in or connected with the mine, or with the control, management or direction thereof, is dangerous to human life or safety, or defective so as to threaten, or tend to, the bodily

Powers of Inspector when causes of danger not expressly provided against exist or when employment of women or children is dangerous.

injury of any person, he may give notice in writing thereof to the owner, agent or manager of the mine, and shall state in the notice the particulars in which he considers the mine, or part thereof, or the matter, thing or practice, to be dangerous or defective, and require the same to be remedied.

(2) If, for reasons to be recorded in the order, the Chief Inspector or the Inspector of Mines is of opinion that there is urgent and immediate danger to the life or safety of women or children employed in or at any mine, he may, by order in writing, prohibit the employment of such women and children.

(3) The Chief Inspector or the Inspector giving notice under sub-section (1) or making an order under sub-section (2) shall forthwith report the same to the Mining Board, or, where there is no Mining Board, to such officer or authority as the Local Government may by general or special order appoint in this behalf.

(4) If the owner, agent or manager of the mine objects to remedy the matter complained of in a notice under sub-section (1) or to comply with an order made under sub-section (2), he may within twenty days after the receipt of the notice or order send his objection in writing, stating the grounds thereof, to the Board or other authority to which the Inspector's report is made under sub-section (3).

(5) On receiving an objection made under sub-section (4), the said Board or other authority shall refer the matter to a Committee.

(6) In case objection is taken to an order made under sub-section (2), the order shall be complied with until the decision of the Committee is received at the mine.

(7) Nothing in this section shall affect the powers of a Magistrate under section 144 of the Code of Criminal Procedure, 1898.

V of 1898.

16. The owner, agent or manager of a mine shall, in the case of

Notice to be given of mining operations.

existing mines within three months after the commencement of this Act, and in the case of new mines within three months after the commencement of mining operations, give notice in writing to the Inspector of Mines appointed under section 4, sub-section (2), for the local area in which the mine is situate, or for the group or class of mines to which the mine belongs, or, if no Inspector of Mines has been appointed for such area or group or class of mines, to the Chief Inspector of Mines, of the address to which he desires his letters to be directed, the kind of minerals worked or to be worked, the name of the person under whom the mining operations are or are to be conducted, and the nature of the moving power which is or is to be used.

17. When any accidental explosion occurs in a mine, or when any accident occurs in or at a mine, causing loss of life or serious bodily injury, the owner, agent or manager of the mine shall give such notice of the explosion or accident to such authorities in such form, and within such time, as may be prescribed.

Notice to be given of accidents.

18. (1) When in or at any mine an explosion or other accident has occurred, if it appears to the Governor General in Council or the Local Government that a formal inquiry into the causes of, and circumstances attending, the accident ought to be held, the Governor General in Council or the Local Government may give directions accordingly, and may appoint a competent person to hold the inquiry, and may also appoint any person or persons possessing legal or special knowledge to act as assessor or assessors in holding the inquiry.

Power for the Government to order formal inquiry into accidents.

(2) The person or persons so appointed shall have all the powers of a Civil Court for the purpose of enforcing the attendance of witnesses and compelling the production of documents; and every person required by such person or persons as aforesaid to furnish any information shall be deemed to be legally bound to do so within the meaning of section 176 XLV of 1860, of the Indian Penal Code.

(3) The person or persons holding an inquiry under this section may exercise such of the powers of an Inspector of Mines as he or they may think it necessary or expedient to exercise for the purposes of such inquiry.

(4) The person or persons holding an inquiry under this section shall make a report to the Local Government, stating the causes of the accident and its circumstances, and adding any observations which he they may think fit to make.

19. The Local Government may cause any report submitted under section 15 or section 18 to be published at such time and in such manner as it may think fit.

Publication of reports.

Rules.

20. (1) The Governor General in Council may, for the whole or any part of British India, and each Local Government, [1] subject to the control [1] of the Governor General in Council, may, for the whole or any part of the Province by notification in the Gazette of India or the local official Gazette, as the case may be, make rules for carrying out the purposes and objects of this Act in respect of all mines or any groups or classes of mines.

Power for Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) regulate the duties and powers of the Chief Inspector and of Inspectors of Mines in respect of the inspection of mines

Leg. Changes:—[1] Substituted by Act IV of 1914, for the words "with the previous sanction"

under this Act, and provide for appeals from the orders of the Chief Inspector and Inspectors of Mines ;

- (b) provide for the appointment of chairmen and members of Mining Boards and Committees and regulate the procedure of such Boards and Committees ;
- (c) prescribe the duties of owners, agents and managers of mines and of all persons acting under them ;
- (d) prescribe the qualifications of managers and of all persons acting under them ;
- (e) regulate the manner of ascertaining, by examination or otherwise, the qualifications of managers and persons acting under them, and the granting and renewal of certificates of competency ;
- (f) fix the fees (if any) to be paid in respect of such examinations and the grant and renewal of certificates as aforesaid ;
- (g) provide for the making of inquiries into charges of misconduct or incompetency on the part of managers and persons acting under them, and for the suspension and cancellation of certificates of competency ;
- (h) prescribe the matters in respect of which notices, returns and reports shall be furnished by owners, agents and managers, the forms of such notices, returns and reports, the persons and authorities to whom they are to be furnished and the particulars to be contained in them ;
- (i) prescribe the plans (if any) to be kept by owners, agents and managers, and the manner and places in which they are to be kept for purposes of record ;
- (j) regulate, subject to the provisions of the Indian Explosives Act, 1884, and the rules thereunder, the storage and use of IV of 1884. explosives ;
- (k) provide for the safety of the persons employed in mines. their means of entrance thereinto and exit therefrom, the number of shafts or outlets to be furnished, the fencing of shafts, outlets and passages, and the care of all machinery ;
- (l) prohibit, restrict or regulate the employment of women or children either below ground or on particular kinds of labour where such employment is attended by danger to the life, safety or health of such women or children ;
- (m) require owners or agents to maintain registers of women and children employed, and prescribe the forms of such registers ;
- (n) provide for the water-supply, sanitation and conservancy of mines ;
- (o) provide for the safety of the roads and working places in mines ;
- (p) provide for the ventilation of mines and the action to be taken in respect of noxious gases ;
- (q) require and regulate the use of safety lamps in mines ;
- (r) provide against the accumulation of water in mines ;

- (s) regulate the procedure on the occurrence of accidents in mines and the supply of medical appliances and comforts for the benefit of persons injured therein ;
- (t) provide for the fencing of any mine or part of a mine, whether the same is being worked or not, where such fencing is necessary for the protection of the public ;
- (u) provide for the protection of public property and works from injury in respect of any mine when the workings are discontinued ; and
- (v) prescribe the notice to be given by the owner, agent or manager of a mine before extending any mining operations under his control at or to any point within fifty yards of any railway subject to the provisions of the Indian Railways Act, 1890, or of any public works or classes of public works which the Local Government may, by general or special order, specify in this behalf.

IX of 1890.

(3) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

X of 1897.

(4) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897, as that after which a draft of rules proposed to be made under this section will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(5) Where a Mining Board has been constituted under section 9, any rule to be made under this Act shall, before it is published for criticism under sub-section (3), be referred to the Mining Board, and the rule shall not be so published until the said Board has reported as to the expediency of making the proposed rule and as to the suitability of its provisions.

(6) All rules made under this section shall be published in the Gazette of India or in the local official Gazette, as the case may be, and, on such publication, shall have effect as if enacted in this Act.

Special Rules.

21. (1) The owner, agent or manager of a mine may frame and transmit to the Inspector of Mines or, when there is no Inspector for the local area in which the mine is situate or the group or class to which the mine belongs, to the Chief Inspector, a draft of such special rules, not being inconsistent with this Act or any rules for the time being in force under section 20, for the control and guidance of the persons acting in the management of, or employed in or about, the mine as he may deem necessary to prevent accidents and provide for the safety, convenience and discipline of the persons employed in or about the mine.

Power for owners,
etc., to make special
rules.

(2) If any such owner, agent or manager—

- (a) fails within a period of two months after the receipt of a notice from the Inspector or Chief Inspector to transmit a draft of such special rules as are referred to in sub-section (1), or
- (b) submits a draft of such special rules as aforesaid, which is not in the opinion of the Inspector or Chief Inspector sufficient,

the Inspector or Chief Inspector may either—

- (i) propose a draft of such special rules as appear to him to be sufficient, or
- (ii) propose such amendments in the draft submitted to him by the owner, agent or manager as will, in his opinion, render them sufficient,

and shall send such draft rules or draft amendments to the owner, agent or manager for consideration.

(3) If within a period of two months from the date on which any draft rules or draft amendments are sent by the Inspector or Chief Inspector to the owner, agent or manager of a mine under the provisions of sub-section (2), the Inspector or Chief Inspector and the owner, agent or manager are unable to agree as to the terms of the special rules to be made under sub-section (1) or as to the terms of any of such rules, the said Inspector or Chief Inspector shall refer the draft rules for settlement to the Mining Board or, where there is no Mining Board, to such officer or authority as the Local Government may, by general or special order, appoint in this behalf.

(4) A copy of the draft rules as agreed to by the owner, agent or manager and the Inspector or Chief Inspector, or, when they are unable to agree, as settled by the Mining Board or such officer or authority as aforesaid, shall, together with a notice intimating that any objection or suggestion in respect thereof may be submitted in writing by any person employed in the mine to the said Inspector or Chief Inspector for consideration, be posted up for not less than thirty days in legible characters in English and in the vernacular of the district in some conspicuous place in the mine for the information of the persons employed therein, and a certificate to the effect that this has been done signed by the owner, agent or manager of the mine shall be transmitted to the said Inspector or Chief Inspector, together with two copies of the draft rules.

(5) When the publication required by sub-section (4) has been carried out, the Inspector or Chief Inspector shall forward a copy of the draft rules so published, together with a copy of any objections or suggestions in respect thereof received by him, to the Local Government.

(6) The special rules, when approved by the Local Government, with such modifications (if any) as it may think fit, shall be published in like manner as is provided in sub-section (4) respecting the publication of the draft, and, on such publication, shall have effect as if enacted in this Act:

Provided that the Local Government may at any time, by order in writing, which shall be published in like manner as aforesaid, rescind, in whole or in part, any rules so made, and that thereupon such rules shall cease to have effect accordingly.

Penalties.

Penalties for offences.

22. (1) Whoever—

- (a) obstructs the Chief Inspector or an Inspector of Mines in the discharge of his duties under this Act, or refuses or wilfully neglects to furnish him with the means necessary for making any entry, inspection, examination or inquiry thereunder in relation to any mine; or

- (b) counterfeits, or knowingly makes a false statement in, any certificate or in any official copy of a certificate granted under this Act; or
- (c) knowingly uses as true any such counterfeit or false certificate; or
- (d) makes or produces or uses any false declaration, statement or evidence knowing the same to be false for the purpose of obtaining, for himself, or for any other person, a certificate or the renewal of a certificate, or any employment under this Act; or
- (e) contravenes any provision of this Act or any rule or order thereunder for the breach of which no penalty is otherwise provided, where the act done has resulted in loss of life or serious bodily injury to any person;

shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever—

- (a) falsifies any plan or register or record required to be maintained by or under this Act; or,
- (b) being the owner, agent or manager of a mine, omits to give the prescribed notice of an accident in the mine or to make or furnish any prescribed plans or returns; or
- (c) makes, gives or delivers any such plan, register, record, notice or return containing a statement, entry or detail which is not, to the best of his knowledge or belief, true;

shall be punishable with fine which may extend to five hundred rupees.

(3) Whoever—

- (a) employs or allows to be employed in or about a mine, or allows to enter a mine or part of a mine, any person in contravention of any provision of this Act or of any rule or order thereunder; or
- (b) allows any person to perform any work forbidden by, or to work in contravention of, any such provision; or
- (c) fails to comply with any requisition or order made under any such provision; or
- (d) being the owner, agent or manager of a mine, fails to maintain correctly, or to produce, any prescribed plan; or
- (e) contravenes any provision of this Act or any rule or order thereunder for the breach of which no penalty is otherwise provided;

shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing breach under clause (c) of this subsection, with a further fine which may extend to fifty rupees for every day during which the breach is proved to have been persisted in after the date of the receipt by him of the order or requisition referred to in such clause.

Miscellaneous.

23. No prosecution shall be instituted against any owner, agent or manager for any offence against this Act or any rule or order thereunder except at the instance of the Chief Inspector or an Inspector of Mines.

Prosecution of owner, agent or manager.

24. No Court shall take cognizance of any offence against this Act or any rule or order thereunder unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

Limitation of prosecutions.

25. No Court inferior to that of a Magistrate of the first class or Sub-divisional Magistrate shall try any offence against this Act or any rule or order thereunder which is alleged to have been committed by any owner, agent or manager of a mine or any offence which is punishable with imprisonment.

Cognizance of offences.

26. If the Court trying any case instituted on the complaint of the Chief Inspector or an Inspector of Mines under this Act is of opinion that the case is one which should, in lieu of a prosecution, be referred to a Mining Board or a Committee, it may stay the criminal proceedings, and report the matter to the Local Government with a view to such reference being made.

Reference to Mining Board or Committee in lieu of prosecution in certain cases.

27. If any question arises as to whether any excavation or working is a mine within the meaning of this Act, the Local Government may decide the question, and a certificate, signed by a Secretary to the Local Government, shall be conclusive on the point.

Decision of question whether a mine is under this Act.

28. If in any inquiry or proceeding under this Act it is necessary to decide the question whether a person is or is not under the age of twelve years, a certificate in writing, signed by a duly qualified person practising medicine or surgery, who states that he has examined such person, and that the age of such person, as nearly as can be ascertained from such examination, is or is not under twelve years, shall be received as *prima facie* evidence of the age of such person.

Evidence of age.

29. [1] The Local Government[1] may, by notification in the[1] local official Gazette, [1] and subject to such limitations and conditions as may seem to [1] it expedient, exempt from the operation of the whole or any part of this Act any local area, or any mine or group or class of mines, or any class of persons.

Power to exempt from operation of Act.

30. The Governor General in Council or any Local Government shall have authority to reverse or modify any order passed under this Act by any authority subject to his or its control.

Power to alter or rescind orders.

Leg. Changes :—[1] Substituted by Act IV of 1914.

Motor Spirit (Duties) ACT II OF 1917 [MOTOR SPIRIT (DUTIES)]. S. 1

Application of Act to Crown mines.

31. This Act shall apply to mines belonging to the Crown.

Exercise of power by Governor General in Council.

32. The Governor General in Council may, if he thinks fit, exercise any power which is by this Act conferred upon a Local Government.

Temporary Provision.

33. [Bar of prosecutions for certain offences committed within one year of commencement of Act.] *Spent.*

THE MOTOR SPIRIT (DUTIES) ACT, 1917.

(ACT II OF 1917.)

[Passed on the 16th February, 1917.]

HISTORICAL MEMOIR

Year, ^a	No. of Act.	Name of Act.	How affected.
1917	II	Motor Spirit (Duties)	... Am., by Act III of 1919.

An Act to provide for the imposition and levy of certain duties on motor spirit.

WHEREAS it is expedient to impose an excise duty and to increase the existing customs duty on motor spirit; It is hereby enacted as follows:—

Short title, extent and duration **1.** (1) This Act may be called the Motor Spirit (Duties) Act, 1917.

(2) It extends to the whole of British India; [1] *

[1] * * * *

Definitions. **2.** "Manufactory" means any place where motor spirit is refined or otherwise prepared.

"Motor spirit" means any inflammable hydro-carbon (including any mixture of hydro-carbons or any liquid containing hydro-carbon) which is capable of being used for providing reasonably efficient motive power for any form of motor vehicle.

Imposition of excise duty on motor spirit manufactured in British India. **3.** (1) There shall be levied and collected at every manufactory in British India on all motor spirit produced in such manufactory, a duty at the rate of six annas on each imperial gallon.

Explanation.—Motor spirit is said to be produced within the meaning of this section when it is issued out of the premises of the manufactory.

(2) If any duty payable under sub-section (1) is not paid within the time fixed by a notice issued in accordance with any rules made under this Act, the authority to which such duty is payable may, in lieu thereof,

Leg. Changes:—[1] The words "and (3) It shall remain in force during the continuance of the present war, and for a period of six months thereafter" were repealed by Act III of 1919, so as to extend the operation of this Act.

S. 6 ACT II OF 1917 [MOTOR SPIRIT (DUTIES)]. Motor Spirit (Duties)

recover any sum not exceeding double the amount of the duty so unpaid, which such authority may in its discretion think it reasonable to require.

(3) All sums recoverable under sub-section (1) shall be recovered in the manner prescribed in the Indian Income-Tax Act, 1886, section 30, II of 1886. sub-sections (1), (2) and (3), with respect to the sums therein referred to.

4. (1) After the commencement of this Act, no person shall issue any motor spirit out of the premises of any manufactory except in accordance with the provisions of rules made under this Act in that behalf, or, until such rules are made, in accordance with the general or special orders of the Local Government.

(2) Whoever contravenes the provisions of sub-section (1), shall be punishable with fine which may extend to rupees one thousand or to a sum double the amount of the duty payable on any motor spirit so issued, whichever is greater.

5. (1) The Governor General in Council may, by notification in the Gazette of India, declare that any of the provisions of the Sea Customs Act, 1878, relating to the levy of, VIII of 1878. and exemption from, custom duties, drawback of duty, ware-housing, offences and penalties, confiscation, and the procedure relating to offences and appeals shall, with such modifications, and alterations as he may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duty on motor spirit imposed by section 3 and may further, for the purpose of providing for the assessment and collection of the said duty and for purposes ancillary thereto make rules—

- (i) imposing on owners of manufactories the duty of furnishing returns and keeping records and books, prescribe the forms of such returns, records and books and the particulars to be contained therein respectively, and the manner in which the same are to be verified, and all such other conditions thereof as may be necessary,
- (ii) providing for the regulation of the issue of motor spirit out of manufactories, the assessment of the duty, and the issue of notices requiring payment and for the recovery of unpaid duty,
- (iii) providing for the inspection of manufactories and for the taking of samples and for the making of tests of any substance produced therein,
- (iv) generally carrying into effect the purposes hereinbefore specified.

(2) In making any rule under the rule-making power hereinbefore conferred, the Governor General in Council may declare that any breach thereof shall be punishable with fine which may extend to rupees five hundred.

6. In addition to the duty imposed by section 3 of the Indian Tariff Act, 1894, as subsequently amended, read with Schedule II of the said VIII of 1894. Act, there shall be levied and collected at every port to which that Act applies a duty at the rate of six annas on each imperial gallon of motor spirit, and this additional duty shall be deemed to be a duty imposed under section 3 of the said Act and that Act shall apply accordingly.

THE INDIAN MOTOR VEHICLES ACT, 1914.

(ACT VIII OF 1914.)

[Passed on the 28th February, 1914.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
[For enactments repealed, see Schedule to this Act.]			
1914	VIII	Indian Motor Vehicles	Rep. in pt., Act XVII of 1914. Am., Act XIII of 1916.

An Act to consolidate and amend the law relating to Motor Vehicles in British India.

WHEREAS it is expedient to consolidate and amend the law relating to motor vehicles in British India ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called the Indian Motor Vehicles Act, 1914.

(2) This Act, except Part III thereof, extends to the whole of British India, including British Baluchistan, the Sonthal Parganas and the Pargana of Spiti. Part III extends in the first instance only to the Provinces of Madras, Bombay, Bengal, the United Provinces of Agra and Oudh, the Punjab, Burma, Bihar and Orissa, the North-West Frontier Province and Delhi. The Local Government of any other Province may, by notification in the local official Gazette, extend Part III to the whole or any part of such province.

(3) It shall come into force on such date as the Governor General in Council, by notification in the Gazette of India, may direct.

2. "Motor vehicle" includes a vehicle, carriage or other means of conveyance propelled, or which may be propelled, on a road by electrical or mechanical power either entirely or partially ;

"prescribed" means prescribed by rules under this Act ;

"public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public are granted access or over which they have a right to pass.

PART II.

PROVISIONS OF GENERAL APPLICATION.

Prohibition of driving motor vehicles by persons under 18 3. (1) No person under the age of eighteen years shall drive a motor vehicle in any public place.

(2) No owner or person in charge of a motor vehicle shall allow any person under the age of eighteen years to drive the same in any public

place; and in the event of a contravention of sub-section (1), the Court may presume that the motor vehicle was driven with the consent of the owner or person in charge.

Duty to stop vehicle for regulating traffic and in case of accident.

4. The person in charge of a motor vehicle shall cause the vehicle to stop and to remain stationary so long as may reasonably be necessary—

- (a) when required to do so by any police-officer for the purpose of regulating traffic or of ascertaining his name and address with a view to prosecuting such person under this Act or for any purpose connected with the enforcement of the provisions of this Act or the rules thereunder, or
- (b) when required to do so by any person having charge of any animal if such person apprehends that the animal is, or will be, alarmed by the motor vehicle, or
- (c) when he knows or has reason to believe that an accident has occurred to any person or to any animal or vehicle in charge of a person owing to the presence of the motor vehicle and he shall also, if so required, give his name and address and the name and address of the owner of such motor vehicle.

5. Whoever drives a motor vehicle in a public place recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the place, and the amount of traffic which actually is at the time, or which might reasonably be expected to be, in the place, shall, on conviction, be punishable with fine which may extend to five hundred rupees.

PART III.

LICENSING AND CONTROL.

6. No person shall drive a motor vehicle in a public place unless he is licensed in the prescribed manner, and no owner or person in charge of a motor vehicle shall allow any person who is not so licensed, to drive it:

Provided that, subject to rules made by the Local Government in this behalf, this section shall not apply to a person receiving instruction in driving a motor vehicle.

Transfer of license.

7. The holder of a license shall not allow it to be used by any other person.

Production of license.

8. The driver of a motor vehicle shall produce his license upon demand by any police-officer.

Extent of validity of license to drive.

9. Every license to drive a motor vehicle shall be valid in such area as may be specified therein:

Provided that no license shall specify any area outside the province in which it is granted, unless it is issued [1] in accordance with such conditions and restrictions as the Governor General in Council may impose.

Leg. Changes:—[1] The words "by such authority and" were repealed by Act XVII of 1914.

Registration of motor vehicles. **10.** (1) The owner of every motor vehicle shall cause it to be registered in the prescribed manner.

(2) Such registration shall be valid in such area as may be specified in the certificate of registration :

Provided that no certificate of registration shall be valid outside the province in which it is granted unless it is issued in accordance with such conditions and restrictions as the Governor General in Council may impose.

11.(a) (1) The Local Government, subject to the condition of previous publication, shall make rules for the purpose of carrying into effect the provisions of this Act and of regulating, in the whole or any part of the territories under its administration, the use of motor vehicles or any class of motor vehicles in public places.

(2) In particular, and without prejudice to the generality of the foregoing powers, the Local Government may make rules for all or any of the following purposes, namely :—

- (a) providing for the registration of motor vehicles, and the conditions subject to which such vehicles may be registered, the fees payable in respect of and incidental to registration, the issue of certificates of registration, the notification of any changes of ownership, and (subject to the provisions of section 10), the area in which certificates of registration shall be valid ;
- (b) providing for facilitating the identification of motor vehicles by the assignment of distinguishing numbers to such vehicles and the displaying of number and name plates thereon, or in any other manner ;
- (c) regulating the construction and equipment of motor vehicles, including the provision and use of lights, bells, horns, brakes, speed-indicators or other appliances ;
- (d) prescribing the authority by which, and the conditions subject to which, drivers of motor vehicles or any class of such drivers may be licensed, the fees payable in respect of such licenses, and (subject to the provisions of section 9), the area within which, and the duration for which, licenses shall be valid ;
- (e) prescribing the conditions subject to which, and the fees (if any) on payment of which, motor vehicles may be let or plied for hire in public places, generally or in any particular public place ;
- (f) prescribing the precautions to be observed when motor vehicles are standing in any public place ;
- (g) limiting the speed at which motor vehicles may be driven generally or in any particular public place ;
- (h) prohibiting or regulating the driving of motor vehicles in public places, where their use may, in the opinion of the Local

Government, be attended with danger or inconvenience to the public; and

- (i) providing generally for the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to property, or of obstruction to traffic.

(3) All rules made under this section shall be published in the local official Gazette; and, on such publication, shall have effect as if enacted in this Act.

12. The prescribed authority shall give, in the prescribed manner,

Posting of notices. public notice of any rule, made by the Local Government under section 11, prohibiting or regulating the driving of motor vehicles in any public place, or limiting the speed of motor vehicles in any such place; and, for the purpose of giving effect to any such rule, shall display conspicuous notices at or near the place to which the rule refers.

13. The Local Government may, by notification in the local official Gazette, exclude any area specified in such notification

Power to Local Government to exclude areas or motor vehicles from this Part.

from the operation of this Part; and may, by a like notification, exempt either generally or for a specified period any motor vehicle or class of motor vehicles from the operation of all or any of the provisions of this Part.

PART IV.

MOTOR VEHICLES TEMPORARILY LEAVING OR VISITING BRITISH INDIA.

Power of Governor General in Council to make rules.

14. (1) The Governor General in Council may make rules for all or any of the following purposes, namely :—

- (i) for the grant and authentication of any travelling passes, certificates or authorities for the use of persons temporarily taking their motor vehicles out of British India, or to drivers of such vehicles when proceeding out of British India for the purpose of driving such vehicles, and
- (ii) prescribing the conditions subject to which motor vehicles brought temporarily into British India by persons intending to make a temporary stay there may be possessed, used and driven.

(2) All rules made under this section shall be published in the Gazette of India; and, on such publication, shall have effect as if enacted in this Act.

Saving. 15. Nothing in this Act or in any rule made [1] by the Local Government under section 11 [1] relating to—

- (a) the registration of motor vehicles,
- (b) requirements as to construction, identification or equipment of such vehicles, or
- (c) the licensing or qualifications of drivers of such vehicles,

Leg. Changes:—[1] Substituted by Act XIII of 1916 for the word "thereunder."

shall apply in the case of any motor vehicle such as is referred to in clause (ii) of sub-section (1) of section 14, or of any person possessing, using or driving the same, provided that the requirements of any rule made under the said clause and applicable to such vehicle or person are complied with.

PART V.

MISCELLANEOUS.

16. (a) Whoever contravenes any of the provisions of this Act or of any rule made thereunder shall, if no other penalty is elsewhere provided in this Act for such contravention, be punishable with fine which may extend to one hundred rupees, and, in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder, with fine which may extend to two hundred rupees.

17. No Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try any offence punishable under this Act or any rule made thereunder.

Cognizance of offences.
Cancellation and suspension of license and disqualification for obtaining license.

18. (1) A Local Government may, in its discretion,—

- (i) cancel or suspend any license granted under this Act, and
- (ii) declare any person disqualified for obtaining a license under this Act either permanently or for such period as it thinks fit.

(2) Any Court by which any person is convicted of an offence against the provisions of this Act or any rule made thereunder or of any offence in connection with the driving of a motor vehicle shall, if such person holds a license under the Act, cause particulars of the conviction to be endorsed thereon and may, in respect of such person and of his license, if any, exercise the like powers as are conferred by sub-section (1) in the Local Government :

Provided that no order made by a Court under this sub-section shall affect any person or license for a period exceeding one year from the date of such conviction.

(3) Any Court before which the holder of a license under this Act is accused of any offence mentioned in sub-section (2) may suspend such license until the termination of the proceedings before it.

(4) A copy of every order of cancellation, suspension or disqualification made under this section in respect of a license or the holder of a license shall be endorsed on the license, and a copy of every endorsement, in accordance with the provisions of this section, shall be sent to the authority by which such license has been granted.

(5) Every holder of a license shall, when called upon to do so, produce his license before any authority acting under this section.

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(6) A person whose license has been cancelled or suspended in accordance with the provisions of this section, shall, during the period for which such order of cancellation has effect, or during the period of suspension, as the case may be, be disqualified for obtaining a license.

(7) No person whose license has been endorsed or who has been disqualified for obtaining a license shall apply for, or obtain, a license without giving particulars of such endorsement or disqualification.

Repeals. 19. The enactments mentioned in the Schedule are repealed to the extent specified in the fourth column thereof :

Provided that any appointment, notification, order, rule, form or license made or issued under any of the said Acts, shall, so far as it is not inconsistent with the provisions of this Act, continue in force and be deemed to have been issued under the provisions of this Act, unless and until it is superseded by any appointment, notification, order, rule, form or license made or issued under this Act.

SCHEDULE.

(See section 19.)

ENACTMENTS REPEALED.

Year.	No.	Short title.	Extent of repeal.
		I.—Act of the Governor General in Council.	
1912	XII	The Motor Vehicles International Circulation Act, 1912.	The whole.
		II.—Madras Act.	
1907	I	The Madras Motor Vehicles Act, 1907	... The whole.
		III.—Bombay Act.	
1904	II	The Bombay Motor Vehicles Act, 1904	... The whole.
		IV.—Bengal Act.	
1903	III	The Bengal Motor Car and Cycle Act, 1903...	The whole.
		V.—United Provinces Act.	
1911	II	The United Provinces Motor Vehicles Act, 1911.	The whole.
		VI.—Punjab Act.	
1907	II	The Punjab Motor Vehicles Act, 1907	... The whole.
		VII.—Burma Act.	
1906	II	The Burma Motor Vehicles Act, 1906	... The whole.

Native Passenger ACT X OF 1887, (NATIVE PASSENGER SHIPS). S. 1

THE NATIVE PASSENGER SHIPS ACT, 1887.

(ACT X OF 1887.)

[Passed on the 24th February, 1887.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1876	VIII	Native Passenger Ships	Rep., Act X of 1887.
1883	XVII	Native Passenger Ships	Rep., Act X of 1887.
1887	X	Native Passenger Ships	Rep., as to Pilgrim Ships, Act XIV of 1895.

*An Act to consolidate and amend the law relating to
Native Passenger Ships.*

WHEREAS it is expedient to consolidate and amend the law relating to native passenger ships; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

- Title. 1. This Act may be called the Native Passenger Ships Act, 1887.
- Extent and appli- 2. (1) It extends to the whole of British India,
cation. and applies—
- (a) to all subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty ;
 - (b) to all native Indian subjects of Her Majesty without and beyond British India ; and
 - (c) subject to the exceptions mentioned in sub-section (2), to ships carrying as passengers more than thirty natives of Asia or Africa.
- (2) But it does not apply—
- (i) to any ship-of-war, troop ship, transport or other ship belonging to the Royal Navy or Her Majesty's Indian Marine Service, or
 - (ii) to any other ship for the time being in the service of Her Majesty, or
 - (iii) to any ship-of-war belonging to any Foreign Prince or State, or
 - (iv) to any steam-ship not carrying as passengers more than sixty natives of Asia or Africa, or
 - (v) to any ship not intended to carry natives of Asia or Africa as passengers to or from any port in British India.
- (3) Notwithstanding anything in sub-sections (1) and (2), the Local Government may, with the previous sanction of the Governor General in Council, declare all or any of the provisions of this Act to apply to sailing-ships, or any class of sailing-ships, carrying as passengers more than fifteen natives of Asia or Africa, and to steam-ships, or any class of steam-ships, carrying as passengers more than thirty such natives.

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Commencement. 3. This Act shall come into force on such day as the Governor General in Council, by notification in the Gazette of India, appoints.

Repeal. 4. (1) On and from that day the enactments mentioned in the schedule shall be repealed, to the extent specified in the third column thereof.

(2) But all ports, places and officers appointed, rules, declarations and exemptions made, bonds executed, directions given and certificates granted under any of those enactments shall, so far as may be, be deemed to be respectively appointed, made, executed, given and granted under this Act; and

(3) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

Definitions. 5. In this Act, unless there is something repugnant in the subject or context,—

(1) "ship" means a ship to which this Act applies:

(2) "passenger" means a passenger by a ship who is a native of Asia or Africa of the age of twelve years or upwards and is not on the articles of the ship as one of the crew; but it does not include either a passenger in attendance on a person who is not a native of Asia or Africa, or a child under one year of age; and, in the computation of passengers for any of the purposes of this Act, two persons of the age of one year or upwards and under the age of twelve years shall be reckoned as one passenger:

(3) "long voyage" means, subject to the provisions of this Act, any voyage during which the ship performing it will in ordinary circumstances be one hundred and twenty hours or upwards continuously out of port:

(4) "short voyage" means, subject to the provisions of this Act, any voyage during which the ship performing it will not in ordinary circumstances be one hundred and twenty hours continuously out of port:

(5) "voyage" when used without the prefix "long" or "short," means the whole distance between the ship's port or place of departure and her final port or place of arrival:

(6) "Chief Customs-officer" means the chief executive officer of sea-customs in any port or place to which this Act applies: and

(7) "Magistrate" means a person exercising powers not inferior to those of a Magistrate of the second class.

CHAPTER II.

RULES FOR ALL VOYAGES.

Ships to sail only from places appointed by the Government.

6. (1) A ship carrying passengers shall not depart or proceed from, or discharge passengers at, any port or place within British India other than a port or place appointed in this behalf by the Local Government.

Native Passenger ACT X OF 1887 (NATIVE PASSENGER SHIPS). S. 7

(2) After a ship has departed or proceeded on a voyage from a port or place so appointed, a person shall not be received on board as a passenger except at some other port or place so appointed.

7. (1) The master, owner or agent of a ship so departing or proceeding shall give notice to an officer appointed in this behalf by the Local Government that the ship is to carry passengers, and of her destination, and of the proposed time of sailing.

Notice to be given of day of sailing.

(2) The notice shall be given not less than twenty-four hours before that time.

8. After receiving the notice, the officer aforesaid or a person authorized by him shall be at liberty at all times to enter on the ship and inspect her and her fittings and the provisions and stores in her.

Power to enter on and inspect ship.

9. (1) A ship intended to carry passengers shall not commence a voyage from a port or place appointed under this Act, unless the master holds two certificates to the effect mentioned in the two next following sections.

Ship not to sail without two certificates.

(2) The officer whose duty it is to grant a port-clearance for the ship shall not grant it unless the master holds those certificates.

10. The first of the certificates (hereinafter called "certificate A") shall state that the ship is sea-worthy and properly equipped, fitted and ventilated, and the number of passengers which she is capable of carrying.

Contents of certificate A.

11. The second of the certificates (hereinafter called "certificate B") shall state—

Contents of certificate B.

- (a) the voyage which the ship is to make, and the intermediate ports, if any, at which she is to touch ;
- (b) that she has the proper complement of officers and seamen ;
- (c) that food, fuel and pure water over and above what is necessary for the crew, and the other things, if any, prescribed for the ship by the rules under this Act, have been placed on board, of the quality prescribed by the rules, properly packed, and sufficient to supply the passengers on board during the voyage which the ship is to make (including such detention in quarantine as may be probable) according to the scale for the time being prescribed by those rules ;
- (d) that the master holds certificate A ;
- (e) if the ship is to make a short voyage in a season of foul weather, and to carry upper-deck passengers, that she is furnished with substantial bulwarks and a double awning or with other sufficient protection against the weather ;
- (f) if she is to carry passengers to any port in the Red Sea, that she is propelled principally by steam, and, if she is to carry more than one hundred passengers to any such port, that she

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has on board a medical officer licensed in accordance with the rules under this Act; and

- (g) such other particulars, if any, as may be prescribed by those rules.

Grant of certificates.

12. The person by whom certificate A and certificate B are to be granted shall be the officer appointed under section 7.

Substitute for certificate A.

13. Where the master of a ship produces to that officer either of the following certificates, namely :—

- (a) a valid certificate granted by the Board of Trade or by a British Colonial Government, or
- (b) a certificate granted under the authority of a British Indian Government, on a date not more than one year before the proposed day of sailing, and in force and applicable to the voyage on which the ship is to proceed or the service on which she is about to be employed,

the officer may, if the particulars required by section 10 are certified thereby, take the certificate as evidence of those particulars, and it shall then be deemed to be a certificate A for the purposes of this Act.

14. (1) After receiving the notice required by section 7, the officer

Survey of ship.

appointed under that section may, if he thinks fit, cause the ship to be surveyed at the expense of the master or owner by competent surveyors, who shall report to him whether the ship is, in their opinion, seaworthy and properly equipped, fitted and ventilated for the voyage which she is to make :

Provided that he shall not cause a ship holding a certificate mentioned in section 13, clause (a) or clause (b), to be surveyed unless, by reason of the ship having met with damage or having undergone alterations, or on other reasonable ground, he considers it likely that she may be found unseaworthy or not properly equipped, fitted or ventilated for the voyage.

(2) If the officer causes a survey to be made of a ship holding any such certificate, and the surveyors report that the ship is seaworthy and properly equipped, fitted and ventilated for the voyage, and that there was no reasonable ground why the officer should have thought it likely that she would be found unseaworthy, or not properly equipped, fitted or ventilated for the voyage, the expense of the survey shall be paid by the Local Government.

15. (1) The officer authorized to grant a certificate under this Act

Discretion as to grant of certificate.

in respect of a ship shall not grant it unless he is satisfied that she has not on board any cargo likely from its quality, quantity or mode of stowage to prejudice the health or safety of the passengers.

(2) But save as aforesaid, and subject to the provisions of sub-section (3), it shall be in the discretion of the officer to grant or withhold the certificate.

(3) In the exercise of that discretion that officer shall be subject to the control of the Local Government, and of any intermediate authority which that Government appoints in this behalf.

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16. The master or owner shall post up in a conspicuous part of the ship, so as to be visible to persons on board thereof, a copy of each of the certificates granted under this Act in respect of the ship, and shall keep those copies so posted up throughout the voyage.

Copy of certificates to be exhibited.

17. If an officer appointed in this behalf by the Local Government is satisfied that a passenger has brought on board a ship for his own use food of the quality and in the quantity for the time being prescribed by the rules under this Act, the requirements of this Act respecting the supply of food for passengers shall not apply so far as regards the supply of food for that passenger.

Supply by passengers of their own food.

CHAPTER III.

RULES FOR SHORT VOYAGES.

18. (1) For seasons of fair weather, a ship performing a short voyage shall, subject to the provisions of this Act, contain in the between-decks at least six superficial feet and thirty-six cubic feet of space available for every between-decks passenger, and on the upper-deck at least four superficial feet available for each such passenger and six superficial feet available for each upper-deck passenger.

Space to be available for passengers.

(2) For seasons of foul weather, a ship propelled by sails and performing a short voyage shall, subject as aforesaid, contain in the between-decks at least twelve superficial feet and seventy-two cubic feet of space available for every between-decks passenger, and on the upper-deck at least four superficial feet available for each such passenger and twelve superficial feet available for each upper-deck passenger.

(3) For seasons of foul weather, a ship propelled by steam, or partly by steam and partly by sails, and performing a short voyage shall, subject as aforesaid, contain in the between-decks at least nine superficial feet and fifty-four cubic feet of space available for every between-decks passenger, and on the upper-deck at least four superficial feet available for each such passenger and nine superficial feet available for each upper-deck passenger.

(4) But in seasons of foul weather a ship shall not carry upper-deck passengers unless she is furnished with substantial bulwarks and a double awning or with other sufficient protection against the weather.

19. If a ship performing a short voyage takes additional passengers on board at an intermediate port or place, the master shall obtain from the officer appointed at that port or place under section 7 a supplementary certificate stating—

Ship taking additional passengers at intermediate place.

- (a)** the number of passengers so taken on board, and
- (b)** that food, fuel and pure water over and above what is necessary for the crew, and the other things, if any, prescribed for the ship by the rules under this Act, have been placed on board, of the quality prescribed by the rules, properly packed,

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and sufficient to supply the passengers on board during the voyage which the ship is to make (including such detention in quarantine as may be probable according to the scale for the time being prescribed by those rules :

Provided that, if the certificate B held by the master of the ship states that food, fuel and pure water over and above what is necessary for the crew, and the other things, if any, prescribed for her by the rules under this Act, have been placed on board, of the quality prescribed by the rules, properly packed, and sufficient to supply the full number of passengers which she is capable of carrying, the master shall not be bound to obtain any such supplementary certificate.

20. When the ship reaches her final port or place of arrival, the master shall notify to such officer as the Governor General in Council appoints in this behalf the date and supposed cause of death of every passenger dying on the voyage.

CHAPTER IV.

RULES FOR LONG VOYAGES.

21. (1) A ship propelled by sails and performing a long voyage shall, subject to the provisions of this Act, contain in the between-decks at least twelve superficial feet and seventy-two cubic feet of space available for every passenger.

(2) A ship propelled by steam, or partly by steam and partly by sails, and performing a long voyage, shall, subject as aforesaid, contain in the between-decks at least nine superficial feet and fifty-four cubic feet of space available for every passenger.

22. The master of a ship departing or proceeding on a long voyage from any port or place in British India shall sign two statements, specifying the number and the respective sexes of all the passengers, and the number of the crew, and shall deliver them to the officer appointed under section 7, who shall thereupon, after having first satisfied himself that the numbers are correct, countersign and return to the master one of the statements.

23. The master shall note in writing on the statement returned to him, and on any additional statement to be made under the next following section, the date and supposed cause of death of any passenger who may die on the voyage, and shall, when the ship arrives at her port or place of destination or at any port or place at which it may be intended to land passengers, and, before any passengers leave the ship, produce the statement, with any additions thereto made, to a person lawfully exercising consular authority on behalf of Her Majesty at the port or place or to the Chief Customs-officer thereat or the officer (if any) appointed there under section 7.

24. (1) In either of the following cases, namely,—

(a) if after the ship has departed or proceeded on a long voyage any additional passengers are taken on board at a port or

Native Passenger ACT X OF 1887 (NATIVE PASSENGER SHIPS). S. 25

place within British India appointed under this Act for the embarkation of passengers, or

- (b) if the ship upon her voyage touches or arrives at any such port or place, having previously received on board additional passengers at any place beyond British India,

the master shall obtain a fresh certificate to the effect of certificate B from the officer appointed at that port or place under section 7, and shall make additional statements specifying the number and the respective sexes of all the additional passengers.

(2) All the foregoing provisions of this Act with respect to certificate B and statements concerning passengers shall be applicable to any certificate granted or statement made under this section.

25. A ship carrying passengers from or to any port in British India to or from any port in the Red Sea shall be propelled principally by steam.

26. A ship carrying more than one hundred passengers from or to any port in British India to or from any port in the Red Sea shall have on board a medical officer licensed in accordance with the rules under this Act.

27. A ship carrying passengers from or to any port in British India other than Aden to or from any port in the Red Sea shall touch at Aden, and shall not leave that port without having obtained from the proper authority a clean bill of health.

28. The authority at Aden empowered to grant the bill of health shall refuse to grant it if the ship has on board a greater number of passengers than the number allowed for the ship by or under this Act, and may refuse to grant it if the requirements of any rule under this Act are not complied with on board the ship.

29. In the case of a ship carrying passengers from any port in British India other than Aden to any port in the Red Sea, the officer whose duty it is to grant a port-clearance for the ship shall not grant the clearance unless and until the master, owner or agent of the ship and two sureties resident in British India have executed in favour of the Secretary of State for India in Council a joint and several bond, for the sum of five thousand rupees, conditioned—

- (a) that the ship shall touch at Aden on the outward voyage and there obtain a clean bill of health, and shall do the same on the homeward voyage if the ship continues to carry more than sixty passengers, and
- (b) that the master and medical officer (if any) of the ship shall comply with, on the outward voyage, and also on the homeward voyage if the ship continues to carry more than sixty passengers, the provisions of this Act and of such rules relating to ships carrying passengers between ports in British India and ports in the Red Sea as the Governor General in Council may make under this Act.

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30. (1) The Local Government may direct that no passenger shall be received on board any ship or any ship of a specified class carrying passengers from any port in British India to any port in the Red Sea unless and until the passenger has been inspected, at such time and place, and in such manner, as the Local Government may fix in this behalf, by a medical officer to be appointed by that Government for the purpose.

Power for Local Government to direct medical inspection of passengers.

(2) If in the opinion of the officer making an inspection under this section a passenger is suffering from any dangerously infectious or contagious disease, the passenger shall not be permitted to embark.

CHAPTER V.

PENALTIES.

31. If a ship departs or proceeds on a voyage from, or discharges passengers at, any port or place within British India in contravention of the provisions of section 6, sub-section (1), or section 9, or if a person is received as a passenger on board a ship in contravention of the provisions of section 6, sub-section (2), the master or owner shall, for every passenger carried in the ship, or for every passenger so discharged or received on board, be punished with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to one month, or with both, and the ship, if found within two years in any port or place within British India, may be seized and detained by a Chief Customs-officer until the penalties incurred under this Act by her master or owner have been adjudicated, and the payment of the fines imposed on him under this Act, with all costs, has been enforced, under the provisions of this Act:

Penalty for ship unlawfully departing or receiving passengers on board.

Provided that the aggregate term of imprisonment awarded under this section shall not exceed one year.

32. If a person impedes or refuses to allow the entry or inspection authorized by or under this Act, he shall be punished with fine which may extend to five hundred rupees for each offence, or with imprisonment for a term which may extend to three months, or with both.

Penalty for opposing entry on or inspection of ships.

33. If a master or owner without reasonable excuse, the burden of proving which shall lie upon him, fails to comply with the requirements of section 16 with respect to the posting of copies of certificates, he shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to one month, or with both.

Penalty for not exhibiting copy of certificates.

34. If a master fails to comply with any of the requirements of section 22 or section 23, as to the statements concerning passengers, or wilfully makes any false entry or note in or on any such statement, or without reasonable excuse, the burden of proving which shall lie upon him, fails to obtain any such supplementary certificate as is mentioned in section 19, or to report deaths as required by section 20, or to obtain any such

Penalty for not complying with requirements as to statements concerning passengers and certain other matters.

Native Passenger ACT X OF 1887 (NATIVE PASSENGER SHIPS). S. 35

fresh certificate, or to make any such statement of the number of additional passengers, as is mentioned in section 24, he shall be punished with fine which may extend to five hundred rupees for every such offence, or with imprisonment for a term which may extend to three months, or with both.

35. If a master, after having obtained any of the certificates mentioned in section 9, section 19 or section 24, fraudulently does or suffers to be done any thing whereby the certificate becomes inapplicable to the altered state of the ship, her passengers or other matters to which the certificate relates, he shall be punished with fine which may extend to two thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

Penalty for fraudulent alteration in ship after certificate obtained.

36. If a master without reasonable excuse, the burden of proving which shall lie upon him, omits to supply to any passenger the allowance of food, fuel and water prescribed by the rules under this Act, he shall be punished with fine which may extend to twenty rupees for every passenger who has sustained detriment by the omission.

Penalty for failing to supply passengers with prescribed provisions.

37. (1) If a ship carrying passengers to or from any port or place in British India has on board a number of passengers which is greater than the number allowed for the ship by or under this Act, the master and owner shall, for every passenger over and above that number, be each punished with fine which may extend to twenty rupees, and the master shall further be liable to imprisonment for a term which may extend to one week in respect of each such passenger :

Penalty for having excessive number of passengers on board.

Provided that the aggregate term of imprisonment awarded under this section shall not exceed six months.

(2) Any officer authorized in this behalf by the Local Government may cause all passengers over and above the number allowed by or under this Act to disembark and may forward them to any port at which they may have contracted to land, and recover the cost of so forwarding them from the master or owner of the ship as if the cost were a fine imposed under this Act, and a certificate under the hand of that officer shall be conclusive proof of the amount of the cost aforesaid.

38. If a ship carrying passengers from any port or place beyond British India to any port or place in British India has on board a number of passengers greater either than the number allowed for the ship by or under this Act or than the number allowed by the license or certificate, if any, granted in respect of the ship at her port or place of departure, the master and owner shall, for every passenger in excess of that number, be each punished with fine which may extend to twenty rupees.

Penalty for bringing passengers from foreign port in excess of authorized number.

8. 44 ACT X OF 1887 (NATIVE PASSENGER SHIPS). Native Passenger

39. If the master of a ship lands any passenger at any port or place other than the port or place at which the passenger

Penalty for landing passenger at a place other than that at which he has contracted to land.

may have contracted to land, unless with his previous consent, or unless the landing is made necessary by perils of the sea or other unavoidable accident, the master shall, for every such offence, be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to one

month, or with both.

40. If a ship, otherwise than by reason of perils of the sea or other unavoidable accident, touches at any port or place in

Penalty for making voyage in contravention of contract with passengers.

contravention of any express or implied contract or engagement with the passengers with respect to the voyage which the ship was to make and the time which that voyage was to occupy whether the contract

or engagement was made by public advertisement or otherwise, the master and owner shall each be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

41. If a ship carrying passengers from or to any port in British India to or from any port in the Red Sea is not propelled principally by steam as required by section 25,

Penalty on master and owner of certain ships not propelled by steam.

the master and owner shall each be punished with fine which may extend to five hundred rupees, or with imprisonment which may extend to three months, or with both.

42. If a ship carrying more than one hundred passengers from or to any port in British India to or from any port in the

Penalty on master of certain ships sailing without medical officer.

Red Sea has not on board a medical officer as required by section 26, the master of the ship shall be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to

three months, or with both.

43. If in the case of a ship to which section 27 applies the master without reasonable excuse, the burden of proving

Penalty for not obtaining bill of health at Aden.

which shall lie upon him, fails to touch at Aden, or leaves that port without having obtained a bill of health under that section, he shall, for every such

offence, be punished with fine which may extend to two thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

44. If in the case of any such ship as is referred to in the last foregoing section the master or the medical officer, if any,

Penalty on master or medical officer of certain ships disobeying rules.

of the ship without reasonable excuse, the burden of proving which shall lie upon him, breaks, or omits or neglects to obey, any rule under this Act applicable to the ship, he shall be punished with fine which may

extend to five hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

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45. If the master of a ship to which a direction under section 30 applies knowingly receives on board the ship any person in contravention of that section, he shall be punished with fine which may extend to five hundred rupees for each person so received, or with imprisonment which may extend to three months, or with both.

Penalty on master receiving passenger in contravention of section 30.

Procedure.

46. (1) Offences against this Act shall be punishable by a Magistrate.

Adjudication of offences, and levy of fine by distress on ship.

(2) If the person on whom a fine is imposed under this Act is the master or owner of a ship, and the fine is not paid at the time and in the manner prescribed by the order of payment, the Magistrate may, in addition to the ordinary means prescribed by law for enforcing payment, direct by warrant the amount remaining unpaid to be levied by distress and sale of the ship, her tackle, furniture and apparel.

47. For the purpose of the adjudication of penalties under this Act, every offence against its provisions shall be deemed to have been committed within the limits of the jurisdiction of the Magistrate of the place where the offender is found.

Jurisdiction.

48. The penalties to which masters and owners of ships are made liable by this Act shall be enforced only on information laid at the instance of officers appointed to grant certificates under this Act, or, at any port or place where there is no such officer, at the instance of the Chief Customs-officer.

Authority to institute proceedings for penalties.

49. A Magistrate imposing a fine under this Act may, if he thinks fit, direct the whole or any part thereof to be applied in compensating any person for any detriment which he may have sustained by the act or default in respect of which the fine is imposed, or in or towards payment of the expenses of the prosecution.

Application of fines.

50. (1) Whenever in the course of any legal proceeding under this Act the testimony of a witness is required in relation to the subject-matter of the proceeding, any deposition which he may have previously made in relation to the same subject-matter before any Justice or Magistrate in Her Majesty's dominions (including all parts of India other than those subject to the same Local Government as the port or place where the proceeding is instituted), or before any British consular officer elsewhere, shall be admissible in evidence on proof that the witness cannot be found within the jurisdiction of the Court in which the proceeding is instituted :

Depositions of absent witnesses.

Provided that the deposition shall not be admissible unless—

- (a) it is authenticated by the signature of the Justice, Magistrate or consular officer ;
- (b) it was made in the presence of the person accused ; and
- (c) the fact that it was so made is certified by the Justice, Magistrate or consular officer.

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(2) It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition; and in any criminal proceeding such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified.

CHAPTER VI.

SUPPLEMENTAL PROVISIONS.

51. (1) The Chief Customs-officer, or other officer, if any, appointed by the Local Government in this behalf, at any port or place within British India at which a ship carrying passengers touches or arrives, shall, with advertence to the provisions of this Act, send any particulars which he may deem important respecting the ship, and the passengers carried therein, to the officer at the port or place from which the ship commenced her voyage, and to the officer at any other port or place within British India where the passengers or any of them embarked or are to be discharged.

(2) The Chief Customs-officer, or other officer, if any, appointed by the Local Government in this behalf, at any port or place in British India at which a ship to which this Act applies touches or arrives, may enter on the ship and inspect her in order to ascertain whether the provisions of this Act as to the number of passengers and other matters have been complied with.

52. In any proceeding for the adjudication of any penalty incurred under this Act any document purporting to be a report of such particulars as are referred to in sub-section (1) of the last foregoing section, or a copy of the proceedings of any Court of Justice duly authenticated, and also any like document purporting to be made and signed by any person lawfully exercising consular authority on behalf of Her Majesty in any foreign port, shall be received in evidence, if it appears to have been officially transmitted to any officer at or near the place where the proceeding under this Act is had.

Power for Gov-
ernor General in
Council and Local
Government to
make rules.

53. (1) The Governor General in Council may make rules consistent with this Act to regulate, in the case of any ship or class of ships, all or any of the following matters :—

- (a) the scale on which food, fuel and water are to be supplied to the passengers or to any class or classes of passengers, and the quality of the food, fuel and water;
- (b) the medical stores and other appliances and fittings to be provided on board for maintaining health, cleanliness and decency;
- (c) the licensing and appointment of medical officers in cases where they are required by this Act to be carried;
- (d) the boats, anchors and cables to be provided on board;
- (e) the instruments for purposes of navigation to be supplied;

Native Passenger ACT X OF 1887 (NATIVE PASSENGER SHIPS). S. 54

- (f) the apparatus for the purpose of extinguishing fires on board and the precautions to be taken to prevent such fires;
- (g) the provision of appliances for saving life and of means for making signals of distress, and the supply of lights inextinguishable in water and fitted for attachment to lifebuoys;
- (h) the functions of the master, medical officer (if any) and other officers of the ship during the voyage;
- (i) the access of between-decks passengers to the upper-deck; and
- (j) generally, to carry out the purposes of this Act.

(2) The Local Government may, with the previous sanction of the Governor General in Council, make rules consistent with this Act to regulate, in the case of any ship or class of ships,—

- (a) the local limits within which, and the time and mode at and in which, passengers are to be embarked or discharged at any port or place appointed under this Act in that behalf; and
- (b) the time within which the ship or any ship of the class is to depart or proceed on her voyage after commencing to take passengers on board.

(3) In making a rule under this section the authority making it may direct that a breach of it shall be punishable with fine which may extend to two hundred rupees, and when the breach is a continuing breach with a further fine which may extend to twenty rupees for every day after the first during which the breach continues.

(4) The power to make rules under this section is subject to the condition of the rules being made after previous publication.

54. The Local Government shall appoint such persons as it thinks fit to exercise and perform the powers and duties which are conferred and imposed by this Act or may be conferred and imposed thereunder.

Appointment of officers.

55. The Governor General in Council may declare, by notification in the Gazette of India, what shall be deemed to be, for the purposes of this Act, "seasons of fair weather" and "seasons of foul weather," and, for sailing-ships and steam-ships respectively, a "long voyage" and a "short voyage."

Power to declare what shall be deemed "seasons of fair weather," and "long voyages."

56. The Governor General in Council may by order prescribe in the case of any ship or class of ships and for all or any voyages the number of superficial or of cubic feet of space to be available for passengers; and the order shall be alternative to, or override, as the Governor General in Council may direct, the provisions of sections 18 and 21 so far as they apply to that ship or class of ships.

Power to prescribe space to be available for passengers.

57. (1) The Local Government, with the previous sanction of the Governor General in Council, may, subject to such conditions as it thinks fit, exempt any ship or class of ships from any provision of this Act.

Power to exempt ship from provisions of Act.

S. 2 ACT VII OF 1908 [NEWS. (INCITE. TO OFFENCES)]. Newspapers

(2) In imposing a condition under this section the Local Government may direct that a breach of it shall be punishable with fine which may extend to two hundred rupees, and when the breach is a continuing breach with a further fine which may extend to twenty rupees for every day after the first during which the breach continues.

SCHEDULE.

ENACTMENTS REPEALED.

(See section 4)

Number and year.	Title.	Extent of repeal.
VIII of 1876	Native Passenger Ships Act, 1876	The whole.
XVII of 1883	Native Passenger Ships Act, 1883	The whole.
VII of 1884	Indian Steam-ships Act, 1884	Section 41.

THE NEWSPAPERS (INCITEMENTS TO OFFENCES) ACT, 1908.

(ACT VII OF 1908.)

[Passed on the 8th June, 1908.]

An Act for the prevention of incitements to murder and to other offences in newspapers.

WHEREAS it is expedient to make better provision for the prevention of incitements to murder and to other offences in newspapers ; It is hereby enacted as follows :—

Short title and extent. 1. (1) This Act may be called the Newspapers (Incitements to Offences) Act, 1908.

(2) It extends to the whole of British India.

Definitions. 2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) " Magistrate " means a District Magistrate or Chief Presidency Magistrate :

(b) " Newspaper " (a) means any periodical work containing public news or comments on public news :

(c) " Printing press " (b) includes all engines, machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing.

(2) Save as herein otherwise provided all words and expressions in this Act shall have the same meanings as those respectively assigned to them in the Code of Criminal Procedure, 1898.

V of 1898.

Case-law :—(a) Newspaper, meaning of, 7 Ind. Cas. 641=12 C.L.J. 294. (b) Press not forfeitable under S. 517, Crim. Pro. Code, 1898, 34 C. 986 ; see, also, 37 P.W.R. 1907, Cr.=6 Cr. L.J. 411 ; 5 N.L.R. 59=9 Cr. L.J. 539.

Newspapers ACT VII OF 1908 [NEWS. (INCITE. TO OFFENCES)]. S. 3

3. (1) In cases where, upon application made by order of or under authority from the Local Government, a Magistrate is of opinion that a newspaper printed and published within the Province contains any incitement (a) to murder or to any offence under the Explosive Substances Act, 1908, or to any act of violence, such Magistrate may make a conditional order declaring the printing press used, or intended to be used, for the purpose of printing or publishing such newspaper, or found in or upon the premises where such newspaper is, or at the time of the printing of the matter complained of was, printed and all copies of such newspaper, wherever found, to be forfeited to His Majesty, and shall in such order state the material facts and call on all persons concerned to appear before him, at a time and place to be fixed by the order, to show cause why the order should not be made absolute.

(2) A copy of such order shall be fixed on some conspicuous part of the premises specified in the declaration made in respect of such newspaper under section 5 of the Press and Registration of Books Act, 1867, or of any other premises in which such newspaper is printed, and the affixing of such copy shall be deemed to be due service of the said order on all persons concerned.

(3) In cases of emergency or in cases where the purposes of the application might be defeated by delay, the Magistrate may, on or after the making of a conditional order under sub-section (1), make a further order *ex parte* for the attachment of the printing press or other property referred to in the conditional order.

(4) If any person concerned appears and shows cause against the conditional order, the Magistrate shall take evidence, whether in support of or in opposition to such order, in manner provided in section 356 of the Code of Criminal Procedure, 1898.

(5) If the Magistrate is satisfied that the newspaper contains matter of the nature specified in sub-section (1), he shall make the conditional order of forfeiture absolute in respect of such property as he may find to be within the terms of the said sub-section.

(6) If the Magistrate is not so satisfied, he shall set aside the conditional order of forfeiture (b) and the order of attachment, if any.

4. (1) The Magistrate may by warrant empower any Police officer not below the rank of a Sub-Inspector to seize and detain any property ordered to be attached under section 3, sub-section (3), or to seize and carry away any property ordered to be forfeited under section 3, sub-section (5), wherever found and to enter upon and search for such property in any premises—

(a) where the newspaper specified in such warrant is printed or published, or

(b) where any such property may be or may be reasonably suspected to be, or

Case-law :—(a) Meaning, 36 O. 405 (414)=9 O.L.J. 143=13 O.W.N. 672=9 Cr. L.J. 545=2 Ind. Cas. 285; see, also, 7 Ind. Cas. 641=12 O.L.J. 294; 19 M.L.J. 246. (b) See 12 Bom. L.R. 120=5 Ind. Cas. 838=12 Cr. L.J. 268=34 B. 327; press not forfeitable, 8. 317, Cr. P.C., 1898, 34 C. 986; see, also, 37 P.W.R. 1907, Cr.=6 Cr. L.J. 411; 5 M.L.R. 59=9 Cr. L.J. 589.

S. 1 ACT XVII OF 1918 (NON-FER. METAL IN.) Non-Ferrous Metal

(c) where any copy of such newspaper is kept for sale, distribution, publication or public exhibition or reasonably suspected to be so kept.

(2) Every warrant issued under sub-section (1) so far as it relates to a search shall be executed in manner provided for the execution of search warrants by the Code of Criminal Procedure, 1898.

V of 1898.

5. Any person concerned who has appeared and shown cause against a conditional order of forfeiture may appeal to the High Court within fifteen days from the date when such order is made absolute.

Bar of other proceedings.

6. Save as provided in section 5, no order duly made by a Magistrate under section 3 shall be called in question in any Court.

7. Where an order of forfeiture has been made absolute in relation to any newspaper the Local Government may, by notification in the local official Gazette, annul any declaration made by the printer or publisher of such newspaper under the Press and Registration of Books Act, 1867, and may by such notification prohibit any further declaration being made or subscribed under the said Act in respect of the said newspaper, or of any newspaper, which is the same in substance as the said newspaper, until such prohibition be withdrawn.

8. Any person who prints or publishes any newspaper specified in any prohibition notified under section 7 during the continuance of that prohibition shall be liable, on conviction, to the penalties prescribed by section 15 of the Press and Registration of Books Act, 1867.

XXV of 1867.

Application of Code of Criminal Procedure.

9. All proceedings under this Act shall be conducted so far as may be in accordance with the provisions of the Code of Criminal Procedure, 1898.

V of 1898.

Operation of other laws not barred.

10. No proceedings taken under this Act shall operate to prevent any person from being prosecuted for any act which constitutes an offence under any other law.

THE NON-FERROUS METAL INDUSTRY ACT, 1918.

(ACT XVII OF 1918.)

[Passed on the 20th September, 1918.]

An Act to restrict temporarily the persons who may engage in business connected with certain non-ferrous metals and metallic ores.

WHEREAS it is expedient to restrict temporarily the persons who may engage in business connected with certain non-ferrous metals and metallic ores; It is hereby enacted as follows:—

Short title, extent, commencement and duration.

1. (1) This Act may be called the Indian Non-ferrous Metal Industry Act, 1918;

Non-Ferrous Metal ACT XVII OF 1918 (NON-FER. METAL IN.). S. 2

(2) It extends to the whole of British India, including British Baluchistan ;

(3) It shall come into force on the first day of October, 1918 ; and

(4) It shall be in force during the continuance of the present war, and for a period of five years thereafter.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

VII of 1913.

(a) " Indian Company " means a company as defined in section 2 of the Indian Companies Act, 1913.

(b) " License " means a license granted under this Act, and " licensed " and " licensee " have corresponding meanings.

(c) " Prescribed " means prescribed by rules made under this Act.

(d) The expression " share warrants to bearer " includes any bearer securities which confer on the holder thereof any voting power with respect to the management of the company.

3. The metals and ores to which this Act applies are zinc, copper, tin, lead, nickel and aluminium and any other non-ferrous metals and ores to which this Act may be applied by the Governor General in Council by notification in the Gazette of India :

Metals and ores to which the Act applies.

Provided that the expression " metal " shall not include metal which has been subjected to any manufacturing process, except such as may be prescribed ; and that the expression " ore " shall include concentrates, mattes, precipitates and other intermediate products.

4. (1) It shall not be lawful for any person, after the expiration of six months from the commencement of this Act or such longer period as the Governor General in Council may generally or in any particular case allow, to carry on the business of winning, extracting, smelting, dressing, refining or dealing by way of wholesale trade in metal or metallic ore to which this Act applies, unless licensed to do so in accordance with the provisions of this Act :

Prohibition against dealing in certain metals without a license.

Provided that the purchase or sale of metal shall not be deemed to be dealing in such metal where such purchase or sale is incidental only to the trade carried on by the purchaser or seller :

Provided further that no license shall be required when the winning, extracting, smelting, dressing, refining, or dealing is carried on wholly outside India.

(2) In the case of a person with respect to whom any of the conditions set forth in the Schedule apply, or who is controlled by a person in respect of whom any such conditions apply, no license shall be granted, unless the Governor General in Council is of opinion that the grant of a license is expedient.

(3) Save as provided in sub-section (2), any person carrying on or proposing to carry on a business to which sub-section (1) applies shall, on making application to the Local Government in the prescribed manner, and on furnishing such information and allowing inspection of

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such books and documents as the Local Government require, and on payment of the prescribed fee which shall not exceed rupees fifteen, be entitled to a license.

(4) A license shall remain in force unless and until it is suspended or revoked.

(5) The Governor General in Council may revoke or suspend any license granted in accordance with sub-section (2) if he is satisfied that such a course is expedient, or any license granted under sub-section (3) if he is satisfied, on grounds not before the Local Government at the time the license was granted, that the licensee is or has become subject to any of the conditions set forth in the Schedule.

(6) The decision of the Governor General in Council shall be final on the following questions, namely :—

(a) whether or not the business carried on by any person is such as to require a license or not ; or

(b) whether or not any of the conditions set forth in the Schedule apply in respect of any person ; or

(c) whether or not any person is controlled by a person in respect of whom any such conditions apply.

(7) The Local Government shall publish in the prescribed manner the name of any person to whom a license has been granted, or whose license has been suspended or revoked under this Act.

5. (1) The Governor General in Council or the Local Government may, by order in writing, require the applicant for a license or a licensee, or any person who, being a director, partner, manager or officer of, or the holder of or a person interested in shares or securities of, any company, or firm, which has applied for the grant of a license, or to which a license has been granted under this Act, or by which the applicant or licensee is controlled, or being the manager of the business carried on by an individual applicant or licensee, is able to give any information as to the constitution, control or management of the company or firm, or the business carried on by the company, firm, or individual, or the beneficial interest of any person in such business or in any shares or securities of the company or firm, to furnish such information within such time as may be specified in the order.

(2) Any person authorized by the Governor General in Council or the Local Government in this behalf may, for the purpose of verifying or obtaining information of the nature referred to in sub-section (1), inspect any books and documents belonging to or under the control of such company, firm or individual, the inspection of which may reasonably be required for the said purpose.

6. (1) An Indian company carrying on any business to which section 4 (1) applies which has issued share warrants to bearer may give notice requiring the holders of such share warrants to surrender the same for cancellation, and to have their names entered in the register of members in respect of the shares included in such warrants.

Power to require information and inspection of documents.

Provisions as to share warrants to bearer.

Non-Ferrous Metal Act XVII of 1918 (NON-FER. METAL. IN.). S. 7

(2) Such notice shall be given by advertisement in the Gazette of India and by any other method by which notices to or for the information of holders of share warrants to bearer are required to be given by the regulations of the company or the conditions of issue of such warrants.

(3) Where notice has been given under this section, no person shall, as holder of a share warrant, be entitled to attend or vote at any meeting of the company, and any dividends or interest which may become payable in respect of any shares represented by share warrants shall be retained by the company until such share warrants have been surrendered for cancellation.

7. (1) An Indian company carrying on any business to which section 4 (1) applies may give notice requiring a
Provisions as to declarations by share-holders. share-holder or debenture-holder to make a declaration in writing duly signed with his usual signature as to the beneficial ownership of the shares or debentures standing in his name and as to the nationality of such beneficial owner.

(2) Such notice shall be given by any method by which notices to or for the information of holders of shares or debentures are required to be given by the regulations of the company or the conditions of issue of the debentures.

(3) Where notice has been given under this section, no person shall, as holder of a share, be entitled to attend or vote at any meeting of the company, and any dividends or interest which may become payable in respect of any shares or debentures shall be retained by such company until the share-holder or debenture-holder shall have made such declaration as aforesaid.

(4) For the purposes of this section the expressions "shares" and "debentures" include stock and debenture stock, and "share-holder" and "debenture-holder" have corresponding meanings.

Information obtained under the Act not to be disclosed. 8. No information as to any person or business obtained in accordance with the provisions of section 5 or section 7 shall be published or disclosed, except for the purposes of a prosecution under this Act.

Penalties.

9. (1) Any person who—

- (a) carries on the business of winning, extracting, smelting, dressing, refining or dealing in any metal or metallic ore in contravention of this Act; or
- (b) refuses or neglects to furnish any information which by an order under section 5 is required to be furnished, within the time specified in such order, or knowingly furnishes any such information which is false in any material particular; or
- (c) having the custody of any book or document which a person is authorised to inspect under section 5 refuses or neglects to produce the book or document for inspection; or
- (d) fraudulently uses or permits to be fraudulently used any license issued under this Act; or

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(e) makes a declaration in compliance with a notice under section 7 which is false, and which he either knows or believes to be false or does not believe to be true ; or

(f) in contravention of section 8 knowingly publishes or discloses any information obtained in accordance with the provisions of this Act,

shall be punishable with imprisonment which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

(2) Where the person guilty of an offence under this Act is a company, every director, manager, secretary, and other officer thereof who is knowingly a party to the default shall also be guilty of the like offence and liable to the like punishment.

Cognisance of offences against the Act. 10. No Court shall take cognisance of any offence punishable under this Act, unless the Local Government has by order in writing consented to the initiation of the proceedings.

Power to make rules. 11. (1) The Governor General in Council shall make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules shall provide for—

(a) the levying of fees in respect of licenses issued under this Act ;

(b) excluding from dealings by way of wholesale trade within the meaning of this Act, dealings in quantities below such limits as may be specified generally or in respect of any particular metal or metallic ore ; and

(c) any matter which under this Act may be prescribed.

SCHEDULE.

Interpretation.

In this Schedule, " capital " in relation to a company means any shares or securities issued by the company which carry or would, if necessary formalities were complied with, carry any voting power with respect to the management of the company, and shall also include debentures and debenture stock and money lent to the company ;

" hostile foreigner " means a subject of a State which is now at war with His Majesty ;

" association under hostile control " means any association—

(a) where the majority of the directors, partners, managing agents or the persons occupying any of these positions by whatever name called are hostile foreigners ; or

(b) where the majority of the voting power is in the hands of persons who are hostile foreigners or who exercise their voting powers directly or indirectly on behalf of persons who are hostile foreigners ; or

(c) where the control is by any means whatever in the hands of persons who are hostile foreigners ; or

(d) where the executive is an association falling within any of clauses (a), (b), or (c) of this definition, or where the majority of the executive are appointed by such an association.

Oaths

ACT X OF 1873 (OATHS).

Conditions.

1. That the person or the manager or principal officer employed by him, or where the person is a company or firm, that any director or partner or manager or other principal officer thereof is or has been a hostile foreigner, or an association under hostile control.

2. That, in the case of a company, any capital of the company is or was at any time after the 1st of October, 1918, held by or on behalf of a hostile foreigner, or an association under hostile control :

4 & 5 Geo. 5, c. 87; 5 Geo. 5, c. 12; 5 & 6 Geo. 5, c. 79; 5 & 6 Geo. 5, c. 98; 5 & 6 Geo. 5, c. 105; 6 & 7 Geo. 5, c. 32; 6 & 7 Geo. 5, c. 52. Provided that any stock or shares of the company vested in a custodian or other person by virtue of any order made under the Trading with the Enemy Acts, 1914 to 1916, or the Enemy Trading Act, 1915, or the Enemy Trading Act, 1916, or any like enactment in force in any part of His Majesty's dominions shall be deemed to be so held.

3. That the person is or was at any time after the 1st October, 1918, party to any agreement, arrangement or understanding which enables or enabled a hostile foreigner or an association under hostile control to influence the policy or conduct of the business.

4. That the person is or was after the 1st of October, 1918, interested, directly or indirectly, to the extent of one-fifth or more of the capital, profits or voting power in any undertaking, whether or not in British India, engaged in any business to which section 4 (1) applies in which hostile foreigners or an association or associations under hostile control are also interested, directly or indirectly, to the extent of one-fifth or more of the capital, profits or voting power.

5. That the person is by any means whatever subject, directly or indirectly, in the conduct of his business to the influence of a hostile foreigner or an association under hostile control.

6. That in the case of a company, the company has issued share warrants to bearer and has not given notice requiring the holders of such share warrants to surrender the same for cancellation.

THE INDIAN OATHS ACT, 1873.

(ACT X OF 1873.)

[Passed on the 8th April, 1873.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1886	IX	Oaths	Rep., Act X of 1873.
1897	XXI	Office Oaths and Declarations	Do.
1840	V	Oaths	Do.
1872	VI	Oaths	Do.
1873	X	Oaths	Rep. in part, Act XII of 1873; Act XII of 1876; Act VI of 1900. Am. Act VI of 1919.

*An Act to consolidate the law relating to Judicial Oaths,
and for other purposes.*

Preamble. WHEREAS it is expedient to consolidate the law relating to judicial oaths, affirmations and declarations ^(a), and to repeal the law relating to official oaths, affirmations and declarations; It is hereby enacted as follows:—

I.—Preliminary.

Short title. 1. This Act may be called "The Indian Oaths Act, 1873."

Local extent. It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty;

[Commencement.] *Rep. by the Repealing Act, 1876 (XII of 1876).*

2. [Repeal of enactments.] *Rep. by the Repealing Act, 1873 (XII of 1873).*

3. Nothing herein contained applies to proceedings before Courts Martial, or to oaths, affirmations or declarations prescribed [1] by or under any instruction under the Royal Sign Manual of His Majesty or [1] by any law which, under the provisions of the Indian Councils Act, 1861, the Governor General in Council has not power to repeal.

24 & 25 Vict.,
c. 67.

II.—Authority to administer Oaths and Affirmations.

4. The following Courts ^(b) and persons are authorized to administer ^(c), by themselves or by an officer empowered by them in this behalf, oaths ^(d) and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law:—

(a) all Courts and persons having by law or consent of parties authority to receive evidence ^(e);

(b) the Commanding Officer of any military station occupied by troops in the service of Her Majesty:

Provided—

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

Leg. Changes:—[1] These words were inserted by Act VI of 1919.

Case-law:—(a) Object of Act, 10 A. 207; history of judicial oaths, 31 P.R. 1889, Cr.; 10 A. 207. (b) Scope, 16 M. 421 (422); omission to record the fact that oath was administered, 11 A.L.J. 933; Magistrate acting under S. 164, Cr. P.C., a Court, 29 M. 89=3 Cr. L.J. 370; 16 M. 421=1 Weir 175; but see 11 B. 702; Magistrate inquiring under S. 122, Cr. P.C., a Court, 26 A. 371; see also, A.W.N. (1898) 154; A.W.N. (1903) 96; Magistrate holding enquiry under S. 100, Cr. P.C., a Court, 17 Cr. L.J. 491=34 P.R. 1916, Cr.; Magistrate holding preliminary inquiry not a Court, 11 B. 702; local commissioner, 89 F.R. 1909=143 P.W.R. 1909; false statement in the course of a non-judicial enquiry, 17 Cr. L.J. 368=35 Ind. Cas. 672=10 S.L.R. 64. (c) Section enabling, so not requiring administration of oath, 31 P.R. 1889, Cr.; Magistrate holding non-judicial proceeding, 11 B.H.C.R. 11; oath in non-judicial proceeding, effect of, 11 B.H.C.R. 11. (d) Definition, 10 A. 207. (e) Arbitrators, 1 A. 535; 4 A. 283=A.W.N. (1882) 34.

III.—Persons by whom Oaths or Affirmations must be made.

Oaths or affirmations to be made by—

8. Oaths or (a) affirmations (b) shall be made by the following persons :—

- (a) all witnesses (c), that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine (d) such persons or to receive evidence ;
- witnesses ;
- (b) interpreters (e) of questions put to, and evidence given by, witnesses ; and
- interpreters ;
- (c) jurors.
- jurors.

Nothing herein contained shall render it lawful to administer, in a criminal proceeding (f), an oath or affirmation to the accused person (g), or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

Affirmation by Natives or by persons objecting to oaths.

6.(h) Where the witness, interpreter (i) or juror is a Hindu or Muhammadan,

or has an objection to making an oath,

he shall, instead of making an oath, make an affirmation.

Case-law :—(a) Either oath or affirmation but not both, 13 W.R. 17, Cr.; person bound to take oath, 34 P.R. 1916, Cr.; section imperative, 15 Cr. L.J. 161=22 Ind. Cas. 737. (b) Nature of, 31 P.R. 1889, Cr.; difference between simple affirmation and solemn affirmation or oath, 31 P.R. 1889, Cr. (c) Competency of persons, what determines, 11 A. 183 (185) ; competency of witness of tender years, 10 A. 207 (210) ; 23 A. 90 (92) ; at what ages infants may be examined, 10 A. 207 ; competency to be tested before examination, 11 C.W.N. 51=4 Cr. L.J. 412 ; competency to testify a condition precedent, 11 A. 183 (185) ; competency to testify but incompetent to understand, 10 O.C. 337=7 Cr. L.J. 89 ; inability to understand oath, 5 Bom. L.R. 551 ; 16 B. 359 ; 10 A. 207 ; religious belief, whether necessary for administration of oath, 31 P.R. 1889 (a) ; Oudh S.C. 242 ; 11 A. 183 ; 10 A. 207. (d) Person making statement under S. 164, Cr. P.C., 16 M. 421=1 Weir 175 ; 29 M. 89=3 Cr. L.J. 370 ; but see 2 P.R. 1893, Cr. ; confession on oath under S. 164, Cr. P.C., not admissible, 16 C.P.L.R. 16 Cr. ; 27 C. 455=4 C.W.N. 249 ; evidence given *Coram non judice*, (1864) W.R. Cr. 15. (e) Omission to administer oath, effect, 9 C.L.J. 690=13 C.W.N. 942=10 Cr. L.J. 150=36 O. 808=2 Ind. Cas. 697 ; 15 Cr. L.J. 161=38 M. 550=22 Ind. Cas. 737. (f) Application for transfer under S. 526, Cr. P.C., 1 Weir 176 ; administration of oath in *quasi*-civil proceedings, 2 C.L.J. 149=9 C.W.N. 983 ; 16 C. 781 ; see, also, 18 B. 468 ; 17 C.P.L.R. 127 ; 5 C. 536=5 C.L.R. 458. (g) Meaning of, 16 B. 661 ; 21 A. 107 ; 23 C. 498 ; 28 C. 709 ; 28 B. 213 (223)=2 C.L.J. 149=9 C.W.N. 983 ; who are accused persons, 21 A. 107 ; 25 A. 375 ; 15 P.R. 1900, Cr. ; 23 C. 493 ; 2 C.L.R. 652 ; 27 C. 656 ; 27 O. 662 ; who are not accused persons, 4 N.L.R. 81 ; 10 C.L.R. 553 ; 16 B. 661 ; 7 W.R. 44, Cr. ; 38 P.R. 1887, Cr. ; 9 C.W.N. 988 ; oath or affirmation not to be administered to accused, 1 Weir 176 ; accused convicted but not sentenced, 3 Bom. L.R. 437 ; accused in appeal and revision, 12 M. 451 ; 19 A. 200 ; A.W.N. (1897) 23 ; 1 Weir 176 ; accomplice when competent witness, 10 C.W.N. 962 (965)=4 Cr. L.J. 145 ; see, also, U.B.R. (1906), p. 3 ; 23 B. 213 ; 20 A. 426 ; 12 P.R. 1902, Cr. ; 16 B. 661 ; 10 C.L.R. 553 ; Rat. Un. Cr. O. 461 ; Cr. Rulings 28 of 1889 ; 7 W.R. 44, Cr. ; 1 B. 610 ; 52 P.L.R. 1902 ; 16 C.P.L.R. 112 ; 100 P.L.R. 1902 ; 2 A. 260 ; 10 B. 190 ; 9 P.R. 1906, Cr. =4 Cr. L.J. 282 ; 21 P.R. 1904, Cr. ; L.B.R. (1872-1892) 246, 248, 252. (h) See 19 C. 355. (i) Omission to administer oath, effect of, 9 C.L.J. 690=13 C.W.N. 942=10 Cr. L.J. 150=2 Ind. Cas. 697=36 C. 809 ; 9 L.B.R. 88 ; omission to administer oath to a child witness, 13 A.L.J. 1072=38 A. 49=16 Cr.L.J. 829=31 Ind. Cas. 1005=9 Bur. L.T. 138.

In every other case the witness, interpreter or juror shall make an oath^(a).

IV.—Forms of Oaths and Affirmations.

Forms of oaths and affirmations.

7. All oaths and affirmations made under section 5 shall be administered according to such forms as the High Court may from time to time prescribe.

And until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

[1] * * *

8. (b) If any party to, or witness in (c), any judicial proceeding (d) offers to give evidence on oath or solemn affirmation in any form (e) common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency (f), and not purporting to affect any third person (g), the Court (h) may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

Power of Court to tender certain oaths.

9. (i) If any party (j) to any judicial proceeding offers (k) to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding (l), the Court (m) may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation :

Court may ask party or witness whether he will make oath proposed by opposite party.

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

Leg. Changes :—[1] The explanation to S. 7 was repealed by the Lower Burma Courts Act, 1900 (VI of 1900), S. 48.

Case-law :—(a) Section is imperative, 10 A. 207 ; but see, 21 P.R. 1889 ; repetition of *Kalma*, 20 P.R. 1902, Cr. (b) 9 A.L.J. 654 ; 4 A. 302 ; 22 B. 281 ; section not applicable to criminal proceedings, 1 Weir 822 ; 13 B. 391 ; 5 B.L.R. 129. (c) Sec. 8 to 12 not applicable to person outside the case, 4 A. 302 ; but to party, 38 A. 131=14 A.L.J. 38 ; complainant or accused not a party, 13 B. 389. (d) What are, 15 M. 138 (143) ; 12 B. 36 ; 1 A. 1 ; 22 W.R. Cr. 10 (11)=13 B.L.R. App. 40 ; 15 M. 138 (148) ; what are not, 15 M. 138 (143) ; 12 B. 36 ; 10 M.I.A. 340 ; 17 P.R. 1875, Cr. ; 40 P.R. 1881, Cr. ; 36 P.R. 1886 ; 2 L.B.R. 272 (277) ; 21 P.R. 1886, Cr. ; 32 C. 367 ; 9 C.W.N. 364=1 C.L.J. 161=2 Cr. L.J. 121 ; 11 B. 699 ; 6 A. 487 ; 1 A. 1 (13, 14, 16) ; 11 B. 702 ; 30 C. 36=7 C.W.N. 249 ; 30 C. 605=2 A.L.J. 771=9 C.W.N. 454=1 C.L.J. 227. (e) Form of oath to be a binding one, 18 A. 46 (48) ; U.B.R. (1892—1896), Vol. II, p. 598 ; 66 P.R. 1910=7 Ind. Cas. 479. (f) Example of oath repugnant to decency, 66 P.R. 1910=7 Ind. Cas. 479. (g) Oath affecting a third person, 18 A. 46 (48). (h) Person authorised to receive evidence, not a Court, e.g., Local Commissioner, 89 P.R. 1909=143 P.W.R. 1909=3 Ind. Cas. 621. (i) As to conclusive proof of matter stated on oath, 33 C. 386 ; scope, 38 A. 131=14 A.L.J. 38=32 Ind. Cas. 348. (j) Only party can make offer, 14 B. 455 ; *Diss.* in 38 A. 131 ; whether agent or pleader can make offer, 14 B. 455 ; power of guardian *ad litem* to make offer, 14 M. 483 ; 12 M. 503 ; 27 C. 229=4 C.W.N. 327 ; sanction under S. 462, C.P.C., not necessary, *ibid* ; restriction by party making offer, A.W.N. (1906) 280=29 A. 49=3 A.L.J. 54 ; 22 M. 234 ; 22 B. 281 ; 18 A. 46 ; 17 M.L.J. 99, *Dist.* in 4 L.W. 258=M.W.N. (1917) 104. (k) See 38 A. 131=32 Ind. Cas. 348=14 A. L.J. 38. (l) Oath by a person outside the case, 4 A. 302. (m) Competency of arbitrator to act under the section, 4 A. 283=A.W.N. (1882) 34.

10.(a) If such party or witness agrees (b) to make such oath (c) or affirmation, the Court (d) may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission (e) to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court.

Evidence conclusive as against person offering to be bound.

11.(f) The evidence so given (g) shall, as against the person who offered to be bound (h) as aforesaid, be conclusive proof (i) of the matter stated (j).

12.(k) If the party or witness refuses (l) to make the oath or solemn affirmation referred to in section 8, he shall not be compelled to make it (m), but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal (n).

Procedure in case of refusal to make oath.

V.—Miscellaneous.

Proceedings and evidence not invalidated by omission of oath or irregularity.

13.(o) No omission (p) to take any oath or make any affirmation, no substitution of any one for any

Case-law :—(a) As to interpretation of this and the next section, see 22 M. 234. (b) Prior agreement prior to administration of oath necessary, 7 M.L.T. 286; agreement to specify form and place, 21 M.L.J. 618. (c) Weight to be attached to refusal, 7 N.L.R. 50=10 Ind. Cas. 472. (d) Competency of arbitrators to administer special oath, 1 A. 535; 4 A. 283=A.W.N. (1884) 34: does not include a commissioner authorised to take evidence, 7 N.L.R. 50=10 Ind. Cas. 472; discretion of Court to administer oath, 22 M. 234; discretion if the party agreeing withdraws, 15 Mys. C.C.R. 141. (e) Necessity to issue commission, 6 L.B.R. 60=17 Ind. Cas. 930; power to issue commission, 7 C.P.L.R. 122; omission to issue commission irregularity, 7 C.P.L.R. 122; no formal commission but mere report, 7 C.P.L.R. 122. (f) Section not applicable to usual form of oath, 22 W.R. 397. (g) Meaning, 22 W.R. 387. (h) Section does not compel Court to accept evidence as conclusive, 14 A. 141=A.W.N. (1892) 3. (i) Meaning, 8 Bom. L.R. 19=1 M.L.T. 63; see 4 B.L.R. 97; effect of agreement on oath, 17 M.L.J. 99; strict compliance with agreed form necessary, A.W.N. (1885) 188; substantial compliance with agreed form, 31 A. 315=6 A.L.J. 244=2 Ind. Cas. 201; record must show the questions decided, 8 O.C. 11; plaintiff swearing the whole claim to be true, 8 O.C. 11; finding on oath whether *res judicata*, 5 M. 259; *contra* 24 M. 444; see, also, 33 O. 386=10 O.W.N. 501; 12 M.L.T. 613; operates as *res judicata*, 13 M.L.T. 261=36 M. 287. (j) Taking oath is no adjustment of suit, 22 M. 234; where matter stated is sufficient for decision of suit, 22 M. 234; where matter stated is not sufficient, 22 M. 234; persons who took oath which did not cover all questions in issue when dead, 13 A. 386=A.W.N. (1891) 143. (k) Scope, 17 M.L.J. 545. (l) Plaintiff who agreed to take oath or to have suit dismissed, failing to take oath, 17 M.L.J. 545; effect of preventing oath being taken, 17 M.L.J. 99; refusal to take oath, 2 O.L.R. 476; effect of such refusal, 2 B. 680. (m) No one can be compelled to take oath, 17 M.L.J. 545. (n) Contents of record on refusal to take oath, 7 C.P.L.R. 122. (o) Applicability, 14 Or. L.J. 485; scope, 9 O.L.J. 690; 31 P.R. 1889; 16 M. 105; 22 W.R. 1, Or.=14 B.L.R. 295; 14 B.L.R. 294; 20 W.R. 19, Cr.; effect of, see 18 C.W.N. 1323; nature of judicial oath, 10 A. 207; evidence of child admissible, *ibid.*; 20 Bom. L.R. 365=4 Bom. Or. Cas. 221. (p) Intentional and accidental omission, 14 B.L.R. (F.B.) 294; 16 B. 357; 22 W.R. 14, Or.=14 B.L.R. 295 (N); 16 B. 359; 5 Bom. L.R. 551; 16 M. 105=1 Weir 823; does not include deliberate omission, 9 Bur. L.T. 133=17 Cr. L.J. 500; omission to administer oath to a child witness, 15 Or. L.J. 161=22 Ind. Cas. 737 (10 A. 207, *diss.*); 13 A.L.J. 1072 (10 A. 207, *doubted*); omission to record deposition on solemn affirmation, 18 C.W.N. 1323.

S. 1 ACT XVI OF 1881 (OBSTRUCTIONS IN FAIRWAYS). Obstructions

other of them, and no irregularity (a) whatever, in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

Persons giving evidence bound to state the truth. 14.(b) Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound (c) to state the truth on such subject.

Amendment of Penal Code, sections 178 and 181. 15. The Indian Penal Code, sections 178 and XLV of 1860, 181, shall be construed as if, after the word "oath," the words "or affirmation" were inserted.

16. Subject to the provisions of sections 3 and 5, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever. Official oaths abolished.

SCHEDULE.

[Repealed by the Repealing Act, 1873 (XII of 1873).]

THE OBSTRUCTIONS IN FAIRWAYS ACT, 1881.

(ACT XVI OF 1881.)

[Passed on the 15th March, 1881.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1881	XVI	Obstructions in Fairways ...	Am., Act X of 1914.

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions; It is hereby enacted as follows:—

Short title. 1. This Act may be called "The Obstructions in Commencement. Fairways Act, 1881;"[1] * *

Leg. Changes :—[1] Repealed by Act X of 1914.

Case-law :—(a) Wrongness in form immaterial, 4 M.H.C.R. 185; 14 B.L.R. 54, Cr.; 21 W.R. 31, Or.; substantial compliance with prescribed form of oath, 31 A. 315 = 6 A.L.J. 244 = 2 Ind. Cas. 201; child affirmed, 16 M. 105. (b) 12 B. 440; 19 O. 355; 19 M. 375. (c) Obligation to speak truth independent of administration of oath, 31 P.R. 1889, Or.; 34 P.R. 1916, Cr. = 17 Cr. L.J. 491 = 36 Ind. Cas. 71; nullity of trial does not exonerate a witness from speaking truth, 1 Weir 831.

Obstructions ACT XVI OF 1881 (OBSTRUCTIONS IN FAIRWAYS). S. 2

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty or by the Secretary of State for India in Council.

2. Whenever, in any fairway leading to any port in British India, any vessel is sunk, stranded or abandoned, or any fishing-stake, timber or other thing is placed or left, the Local Government of the part of British India in which such port is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,

Local Government empowered to remove or destroy obstruction in fairway.

- (a) cause such thing or any part thereof to be removed ; or
- (b) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, cause the same or any part thereof to be destroyed.

3. Whenever anything is removed under section 2, the Government shall be entitled to receive a reasonable sum (a), having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

Government entitled to expenses incurred in removing obstruction.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the Magistrate of the District or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties ; and such decision shall be final.

Dispute concerning such expenses.

4. The Local Government shall, whenever anything is removed under section 2, publish in the local official Gazette a notification containing a description of such thing, and the time at which and the place from which the same was so removed.

Notice of removal to be given by Local Government.

5. If after publishing such notification, such thing is unclaimed, or

Things removed may, in certain cases, be sold.

If the person claiming the same fails to pay the amount due for the said expenses and any customs duties or other charges properly incurred by the Local Government in respect thereof,

the Local Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

6. On realizing the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same :

Proceeds how applied.

Case-law :—(a) Order of compensation held illegal, Rat. Un. Cr. O. 241=Cr. Rulings 8 of 1886.

S. 12 ACT XVI OF 1881 (OBSTRUCTIONS IN FAIRWAYS). Obstructions

Provided that he makes the claim within one year from the date of the sale.

7. For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel; and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

8. The Governor General in Council may from time to time, by notification in the Gazette of India, make rules to regulate or prohibit in any fairway leading to a port in British India, the placing of fishing-stakes, the casting or throwing of ballast, rubbish, or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion, cause, or be likely to cause, obstruction or danger to navigation.

9. Whoever is guilty of any act or omission in contravention of the rules made under section 8, may be tried for such offence in any district or Presidency-town in which he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

10. Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section 2, or its creation is regulated or prohibited under section 8, any person having a right to maintain or create such obstruction shall be entitled to receive from the Secretary of State for India in Council reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the Presidency-town or district in which the port to which such fairway leads is situate.

11. Whenever any obstruction in a fairway leading to a port in British India has been removed or destroyed, or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the Governor General in Council or a Local Government, previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been effected under this Act.

Certain action of the Government previous to passing of this Act to be deemed to have been taken hereunder.

12. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf.

Saving of other powers possessed by Government.

THE INDIAN OFFICIAL SECRETS ACT, 1889.

(ACT XV OF 1889.)

[Passed on the 17th October, 1889.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1889	XV	Indian Official Secrets ...	Rep. in pt. and Am., Act V of 1904.

An Act to prevent the disclosure of Official Documents and Information.

WHEREAS it is expedient to prevent the disclosure of official documents and information ; It is hereby enacted as follows :—

Title, extent and application. 1. (1) This Act may be called the Indian Official Secrets Act, 1889 ; and

(2) It extends to the whole of British India, and applies—

(a) to all subjects of [1] His Majesty [1] within the dominions of Princes and States in India in alliance with His Majesty, and

(b) to all native Indian subjects of His Majesty without and beyond British India.

Definitions. 2. In this Act, unless there is something repugnant in the subject or context,—

(1) any reference to a place belonging to His Majesty includes a place belonging to any department of the Government, whether the place is or is not actually vested in His Majesty :

(2) expressions referring to communications include any communication, whether in whole or in part, and whether the document, sketch, plan, model or information itself or the substance or effect thereof only be communicated :

(3) " document " includes part of a document :

(4) " model " includes design, pattern and specimen :

(5) " sketch " includes any photograph or other mode of representation of any place or thing :

[2] *

(6) " office under His Majesty " includes any office or employment in or under any department of the Government : [3] and

[3](7) " civil affairs " means affairs—

(a) affecting the relations of His Majesty's Government or of the Governor General in Council with any foreign State, or

Leg. Changes :—[1] The expression " His Majesty " substituted throughout the Act for the expression " Her Majesty " by S. 6, Act V of 1904. [2] The word " and " repealed by Act V of 1904. [3] The word " and " at end of clause 6 and the whole of clause 7, were added by S. 2, Act V of 1904.

- (b) affecting the relations of the Governor General in Council with any Native State in India, or relating to the public debt or the fiscal arrangements of the Government of India or any other important matters of State, where these affairs are of such a confidential nature that the public interest would suffer by their disclosure.

Disclosure of 3. (1) (a) Where a person for the purpose of information. (a) wrongfully obtaining information—

- (i) enters or is in any part of a place belonging to His Majesty, being a fortress, arsenal, factory, dockyard, camp, ship [1]* or other like place, in which part he is not entitled to be, or,
- (ii) when lawfully or unlawfully in any such place as aforesaid, [2] or in any office belonging to His Majesty [2] either obtains [2] or attempts to obtain [2] any document, sketch, plan, model or knowledge of [2] any naval, military or civil affair of His Majesty [2] which he is not entitled to obtain, [2] or any copy of any such document, sketch, plan or model [2] or takes [2] or attempts to take [2] without lawful authority any sketch or plan, or,
- (iii) when outside any fortress, arsenal, factory, dockyard or camp belonging to His Majesty, takes or attempts to take without authority given by or on behalf of His Majesty any sketch or plan of that fortress, arsenal, factory, dockyard or camp, or
- (b) where a person knowingly (b) having possession of, or control over, any such document, sketch, plan, model or knowledge as has been obtained or taken by means of any act which constitutes an offence against this Act at any time wilfully and without lawful authority communicates or attempts to communicate the same to any person to whom the same ought not, [3] in the public interest, [3] to be communicated at that time, or
- (c) where a person after having been entrusted in confidence by some officer under His Majesty with any document, sketch, plan, model or information relating to any such place as aforesaid, or to the [4] naval, military or civil [4] affairs of His Majesty, wilfully and in breach of such confidence communicates the same when [3] in the public interest [3] it ought not to be communicated,

he shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both ;

Leg. Changes:—[1] The word "office" repealed by S. 3 (a) of Act V of 1904. [2] These words were inserted, and the words "any naval.....Majesty," substituted for "anything" by S. 3 (b), Act V of 1904. [3] Substituted for "in the interest of the State" by S. 3 (e), Act V of 1904. [4] Substituted for "naval or military," by S. 3 (c), Act V of 1904.

Case-law:—(a) Disclosure of Government departmental examination papers, 1 L.B.R. 138. (b) Scope of the term, 1 L.B.R. 138.

[1] (2) Where a person commits any act specified in clauses (i), (ii) and (iii) of sub-section (1), sub-head (a), without lawful authority or permission (the proof of which authority or permission shall be upon him), the Court may presume that he has committed such act for the purpose of wrongfully obtaining information; and

[1] (3) Where a person having possession of any document, sketch, plan, model or information relating to any fortress, arsenal, factory, dockyard, camp, ship, office or other like place belonging to His Majesty, or to the [2] naval, military or civil [2] affairs of His Majesty, in whatever manner the same has been obtained or taken, at any time wilfully communicates the same to any person to whom he knows the same ought not, [3] in the public interest [3], to be communicated at that time, he shall be liable to the same punishment as if he committed an offence under the foregoing provisions of this section.

[1] (4) Where a person commits any act declared by this section to be an offence, he shall, if he intended to communicate to a foreign State any information, document, sketch, plan, model or knowledge obtained or taken by him, or entrusted to him as aforesaid, or if he communicates the same to any agent of a foreign State, be punished with transportation for life or for any term not less than five years, or with imprisonment for a term which may extend to two years.

4. (1) Where a person, by means of his holding or having held an office under His Majesty, has lawfully or unlawfully
Breach of official trust. either obtained possession of or control over any document, sketch, plan or model, or acquired any information (a), and at any time corruptly or contrary to his official duty communicates or attempts to communicate that document, sketch, plan, model or information to any person to whom the same ought not [4] * * * * in the public interest, to be communicated at that time, he shall be guilty of a breach of official trust.

(2) A person guilty of a breach of official trust shall—

(a) if the communication was made or attempted to be made to a foreign State, be punished with transportation for life or for any term not less than five years, or with imprisonment for a term which may extend to two years, and

(b) in any other case be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

(3) This section shall apply to a person holding a contract with any department of the Government, or with the holder of any office under His Majesty as such holder, where such contract involves an obligation of secrecy, and to any person employed by any person or body of persons holding such a contract, who is under a like obligation of secrecy, as if the person holding the contract and the person so employed were respectively holders of an office under His Majesty.

Leg. Changes :— [1] Sub-section (2) inserted and original sub-sections (2) and (3) renumbered as (3) and (4) by S. 3 (d), Act V of 1904. [2] Substituted for "naval or military" by S. 3 (c), Act V of 1904. [3] Substituted for "in the interest of the State" by S. 3 (e), Act V of 1904. [4] The words repealed by S. 4, Act V of 1904.

Case-law :—(a) Scope and strict proof, 1 L.B.R. 138.

[1] 5. (1) Notwithstanding anything in the Code of Criminal Procedure, 1898, every offence against this Act committed **V** of 1898. in relation to any fortress, arsenal, factory, dockyard, camp or ship belonging to His Majesty, or in relation to the naval or military affairs of His Majesty, shall, for the purposes of the said Code, be deemed to be cognizable:

Provided that a person accused of any such offence shall not be released on bail unless on the order of a Magistrate of the first class.

(2) Every other offence against this Act shall be non-cognizable.

[1] 6. (1) Any person, being a public servant as defined in the Indian Penal Code, may arrest any person who in his **XLV** of 1860. view commits any of the offences described in section 5, sub-section (1), and any such person, or any police-officer who has arrested any person on a charge of any such offence, and any police-officer to whom any person arrested on any such charge has been made over, shall take or send him before the officer for the time being in command or charge of the fortress, arsenal, factory, dockyard, camp or ship, or of the nearest military station, or before a Magistrate of the first class.

(2) Where any person has been taken or sent before the commanding or other officer in accordance with sub-section (1), such officer may, if he thinks fit, discharge such person, but, if he does not discharge him, shall, without unnecessary delay, take or send him to the nearest police-station or to any Magistrate of the first class.

(3) Where any person has been taken or sent to a police-station or to a Magistrate under sub-section (2), the provisions of the Code of Criminal Procedure, 1898, shall, save as otherwise provided by section 7. **V** of 1898. apply to him as though he had been taken to such police-station or Magistrate without being taken or sent before the commanding or other officer.

[1] 7. (1) No Magistrate of the second class shall have jurisdiction to try any person for an offence against this Act.

(2) No Court shall proceed to the trial of any person for an offence against this Act, except with the consent of the Local Government or the Governor General in Council.

THE OPIUM ACT, 1878.

(ACT I OF 1878.)(a)

[Passed on the 9th January, 1878.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1857	XIII	Opium	Rep. in pts., Act XIV of 1870, I of 1878 and XII of 1891.
1876	XXIII	"	Rep., Act I of 1878 and XII of 1891.
1878	I	Opium	Rep. in pt., Act IV of 1894. Rep. in pt. and Am., Act XII of 1891.

An Act to amend the law relating to Opium.

WHEREAS it is expedient to amend the law relating to opium ;
It is hereby enacted as follows :—

Short title. 1. This Act may be called the Opium Act, 1878.

It shall extend to such local areas as the Governor General in Council may, by notification in the Gazette of India, from time to time direct ;

And it shall come into force in each of such areas on such day as the Governor General in Council in like manner directs in this behalf.

Commencement.

2. [Repeal and amendment of enactments.] Rep. by the Repealing and Amending Act, 1891 (XII of 1891), and the Repealing and Amending Act, 1894 (IV of 1894).

Interpretation- 3. In this Act, unless there be something repug-
clause. nant in the subject or context,—

" opium " (b) includes also poppy-heads, preparations or admixtures of opium, and intoxicating drugs prepared from the poppy :

" Magistrate " means, in the Presidency-towns, a Presidency Magistrate, and elsewhere, a Magistrate of the first class or (when specially (c) empowered by the Local Government to try cases under this Act) a Magistrate of the second class (d) :

" import " means to bring into the territories administered by any Local Government from sea, or from foreign territory, or from a territory administered by any other Local Government :

" export " means to take out of the territories administered by any Local Government to sea, or to any foreign territory, or to any territory administered by another Local Government :

Case-law :—(a) Scope, 9 M.L.T. 459 = 21 M.L.J. 425 = (1911) M.W.N. 371 = 10 Ind. Cas. 326 = 35 M. 582. (b) Muddut, sale of, 13 O.L.R. 386 ; includes admixture of opium, L.B.R. (1873—92), 619. (c) Meaning, 2 L. W. 238. (d) Jurisdiction of 2nd class Magistrate, Rat. Un. Cr. O. 375.

"transport" (a) means to remove from one place to another within the territories administered by the same Local Government.

Prohibition of poppy-cultivation and possession, etc., of opium. 4. Except as permitted by this Act, or by any other enactment relating to opium (b) for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

- (a) cultivate the poppy ;
- (b) manufacture opium (c) ;
- (c) possess opium (d) ;
- (d) transport opium (e) ;
- (e) import or export opium ; or
- (f) sell opium(f).

5. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the local Gazette, make rules (g) consistent with this Act, to permit absolutely, or subject to the payment of duty or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following matters :—

- (a) the cultivation of the poppy (h) ;
- (b) the manufacture of opium (i) ;
- (c) the possession of opium (j) ;
- (d) the transport of opium (k) ;
- (e) the importation or exportation of opium ; and
- (f) the sale of opium, and the form of duties leviable on the sale of opium by retail (l) :

Case-law :—(a) Transport of opium from one district to another, 13 P.R. 1884, Cr.; 13 M. 391=1 Weir 834. (b) Includes admixture of opium, L.B.R. (1872—1892), 619. (c) Power to enter premises, 1 Cr. L.J. 956. (d) Possession, illegality of, L.B.R. (1872—1892), 617; 8 P.R. 1887, Cr; burden of proof, 1 Weir 832. (e) Madras rules regulating transport of opium, 13 M. 191. (f) Sub-lease in contravention of rules not enforceable, 19 B. 626; selling without license forbidden, 9 M.L.T. 459=21 M.L.J. 425=(1911) M.W.N. 371=35 M. 582. (g) Rules to be permissive, Rat. Un. Cr. Cas. 676; rule-making power of Local Government not to be delegated, 1 S.L.R. 70, Cr.=8 Cr. L.J. 188; Rat. Un. Cr. Cas. 292; meaning of opium in rules by the Local Government, 16 P.R. 1883, Cr. (h) License illegally withheld—cultivation without license, 46 P.R. 1885, Cr.; entry of outturn of cultivation, 10 P.R. 1883, Cr.; consumption by licensed cultivator of opium lawfully possessed, 12 P.R. 1884, Cr. (i) Chandu is opium, Rat. Un. Cr. Cas. 284. (j) Scope of rule re-possession, 22 P.R. 1890, Cr.; 8 S.L.R. 198; omission to keep regular account of opium, Rat. Un. Cr. Cas. 297. (k) Illegal transport of opium, 40 P.R. 1887, Cr. (l) Nature of rules permitted under clause (f), 1 S.L.R. 70, Cr.=8 Cr. L. J. 189; selling in excess of that allowed by law, 1 Bom. L.R. 677; registered consumer, L.B.R. (1893—1900), 419; allowing sale by an authorised person, 1 A.L.J. 245; rules regulating sale, 26 C.571; liability of master for act of servant, 34 A. 219=9 A.L.J. 288=14 Ind. Cas. 666=13 Cr. L.J. 282; 7 C.P.L.R. 41, Cr.

Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law relating to sea-customs for the time being in force or under section 6.

6. The Governor General in Council may, from time to time, by notification in the Gazette of India, impose such duty as he thinks fit on opium or on any kind of opium imported by land into British India or into any specified part thereof, and may alter or abolish any duty so imposed.

Duty on opium imported by land. Warehousing opium. 7. The Governor General in Council may, by order notified in the Gazette of India,—

(a) authorize any Local Government to establish warehouses, for opium legally imported into, or intended to be exported from, the territories administered by such Local Government, and

(b) cancel any such order.

So long as such order remains in force, the Local Government may, by notification published in the official Gazette,—

(c) declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by such Government, or into any specified part thereof, intended to be exported thence, and

(d) cancel any such declaration.

Power to make rules relating to warehouses.

An order under clause (b) shall cancel all previous declarations under clause (c) of this section relating to places in the territories to which such order refers.

So long as such declaration remains in force, the owner of all such opium shall be bound to deposit it in such warehouse.

8. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the local Gazette, make rules consistent with this Act to regulate the safe custody of opium warehoused under section 7; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

Penalty for illegal cultivation of poppy, etc.

9. Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

(a) cultivates the poppy, or

(b) manufactures (a) opium, or

Case-law :—(a) Illegal manufacture of Chaudu, 4 A.W.N. 213; manufacture of Chaudu for domestic use, out of opium legally purchased, Rat. Un. Or. Cas. 676; see also 9 P.R. 1881, Cr.

- (c) possesses (a) opium, or
- (d) transports (b) opium, or
- (e) imports or exports opium (c), or
- (f) sells (d) opium, or
- (g) omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes (e) any such rule,

shall, on conviction before a Magistrate (f), be punished for each such offence with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both;

Case-law :—(a) Possession, meaning of, 16 C.P.L.R. 13; L.B.R. (1872—1892) 573, 593; failure to account satisfactorily for possession of opium, 9 P.R. 1919, Cr.; illegal possession of opium, abetment of, 4 P.R. 1884, Cr.; (1911) M.W.N. 361; smoking in a chandu den whether evidence of abetment of illegal possession of opium by the master of the den, A.W.N. (1901) 117; possession under cl. (c), nature of, S.C. 226; S.O. 161; 37 C. 25; custody on behalf of another, not equivalent to possession, 25 A. 262 = A.W.N. (1903) 29. *Rel. on* in 11 Cr. L.J. 55; defence of proprietary rights in plea of illegal possession whether valid, 1 Weir 532; possession of prescribed quantity with a mere intention to sell, not an offence, Rat. Un. Cr. C. 287; illegal possession of opium, 4 P.R. 1884, Cr.; 22 P.R. 1880, Cr.; U.B.R. (1892—1896), Vol. I, 135; illicit possession, L.B.R. (1872—1892) 370; 22 C.W.N. 451; conviction set aside, 43 C. 1161; smuggling, U.B.R. (1897—1901), Vol. I, 241; possession of opium beyond place where his shop is located, no offence, 41 P.R. 1917, Cr.; possession of substance unfit for use as opium and containing only traces of opium, 20 C.W.N. 1206 = 17 Cr. L.J. 412 = 35 Ind. Cas. 972; opium includes bencihi, 4 L.B.R. 132 = 7 Cr. L.J. 410; U.B.R. (1892—1896), Vol. I, 133; 15 Cr. L.J. 532 = U.B.R. 1914, 1st Cr., 1; possession of Railway receipt, whether equivalent to possession of opium, 32 C. 557 = 9 C.W.N. 719 = 2 Cr. L.J. 417; but see, also, 36 C. 1016 = 11 Cr. L.J. 29 = 4 Ind. Cas. 699; possession by servant and master's liability, 15 P.R. 1916, Cr. = 17 Cr. L.J. 194 = 46 P.W.R. 1916 = 34 Ind. Cas. 306; possession by wife or servant when amounts to possession by husband or master, 20 W.R. 54, Cr.; U.B.R. 1909, 2nd Cr., opium, 1; U.B.R. (1897—1901), Vol. I, 232, when opium found in joint family house, liability of a non-managing member, when arises, 2 O.C. 99; 15 A. 129; presumption when opium found in house in exclusive occupation of the accused, S.C. 236; 13 Cr. L.J. 122 = 1 Bur. L.T. 270; 4 L.B.R. 314; charge of possession of excessive quantity of opium, defence of joint possession, how established, 34 P.R. 1905, Cr.; 13 P.R. 1897, Cr. and 31 P.R. 1902, Cr.; liability of master and crew when excessive opium is found in a boat, 8 C.W.N. 249, holder of mate's receipt, U.B.R. (1897—1901), Vol. I, 242; possession of opium without license, U.B.R. (1897—1901) Vol. I, 239; conviction for illegal possession on insufficient evidence, 19 P.R. 1896, Cr.; L.B.R. (1872—1892), 425; cheating by false personation, 4 L.B.R. 315 = 9 Cr. L.J. 15; see, also, 8 Ind. Cas. 596; burden of proof, 17 C.P.L.R. 75; 37 C. 581. (b) Who should get license in Punjab in transporting of opium, 40 P.R. 1887; 13 P.R. 1884, Cr.; proper authorities to grant pass to transport opium when taluks formed separately, 1 Weir 833. (c) Exporting opium, 2 P.R. 1911 = 103 P.L.R. 1911 = 9 Ind. Cas. 692 = 12 Cr. L.J. 116; export, definition of, 15 P.R. 1916, Cr. = 17 Cr. L.J. 194; 34 Ind. Cas. 306. (d) Scope of cl. (f), 1 S.L.R. (Cr.) 70 = 8 Cr. L.J. 188; sale by servant of licensed vendor, whether an offence, S.C. 285; master whether liable for the illegal sale by servant, 11 C.L.R. 464; presumption of illegal sale of opium, A.W.N. (1902) 17; illicit sale of opium, 7 A.L.J. 25 = 11 Cr. L.J. 138 = 5 Ind. Cas. 450; need for Police Commissioner's license for sale of Muddut under Act IV of 1866, 13 C.L.R. 336; conviction without recalling license, legality of, under Act XXI of 1856, 16 W.R. Cr. 59. (e) Breach of the conditions of a license whether an offence, Rat. Un. Cr. Cas. 860, 392, but see 297; 10 P.R. 1893, Cr.; 26 C. 571; 1 A.L.J. 245; liability of cartman carrying opium seed, Rat. Un. Cr. C. 378. (f) Particulars of charge under S. 9, 10 P.R. 1888 (Cr.); 19 P.R. 1891 (Cr.); offences under Act not cognizable by the Court of Sessions, 19 A. 465; 9 B.H.C.R. 343; 3 B.H.O.R. 188; 7 B.H.C.R. 59; 8 B.H.C.R. 1189; B.H.C.R. 166; 24 C. 691; see, also, 9 B.H.O.R. 343; nature of arrest under S. 24 of Act XIII of 1857 and S. 4 (Q), Cr. P.C., 24 C. 696; liability of Police officer for

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

10.(a) In prosecutions under section 9, it shall be presumed (b), until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

Presumption in prosecutions under section 9.

Confiscation of opium. **11.** In any case in which an offence under section 9 has been committed,—

- (a) the poppy so cultivated,
- (b) the opium in respect of which any offence under the same section has been committed,
- (c) where, in the case of an offence under clause (d) or (e) of the same section, the offender is transporting, importing or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium which he is transporting, importing or exporting,
- (d) where, in the case of an offence under clause (f) of the same section, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation(c).

The vessels, packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the vessel or package in which such opium may be concealed, and the animals and conveyances used in carrying it, shall likewise be liable to confiscation(d).

unauthorised search, 24 C. 691; illegality of search as a defence, 11 P.R. 1906=4 Cr. L.J. 290; competency of Magistrate in charge of Excise and Opium administration to try offences under the Act, 15 A. 192; U.B.R. (1897—1901) 137; A.W.N. (1908) 95=7 Cr. L.J. 396=5 A.L.J. 357; tender of pardon for offender under the Act whether valid, 3 B.H.C.R. (Cr.) 59; joint trial of unlicensed vendor of opium and the licensee who allowed the sale, 1 P.W.R. 3 Cr.=113 P.L.R. 1906=4 Cr. L.J. 178; penalty in case of joint offenders under regulation XXI of 1827, 7 B.H.C.R. (Cr.) 39; servants of license holders, liability of, 8 W.R. Cr. 4; summary trial of offence under S. 53, Act XXI of 1856, 23 W.R. Cr. 55; 23 W.R. Cr. 43; held *ultra vires*, 13 Cr. L.J. 55=13 Ind. Cas. 394=4 Bur. L.T. 211; neglect to keep accounts whether punishable, 1 Weir 831; opium found in absence of accused in his house, legality of, conviction for 15 Cr. L.J. 420=24 Ind. Cas. 156; fine, distribution of, 13 P.R. 1894, Cr.; necessity for moderate punishment in certain cases, U.B.R. (1892—1896), Vol. I, 136; L.B.R. (1872—1892) 368; mere contemplation of violating a rule whether punishable, 15 Cr. L.J. 667=25 Ind. Cas. 995.

Case-law:—(a) Scope and meaning, 8 C.W.N. 349. (b) Charge of illegal possession—onus of proving legality, 8 P.R. 1887, Cr.; 1 Weir 832; L.B.R. (1872—92) 597; 3 Bur. L.T. 82; S.C. 161 (Oudh); 14 C.W.N. 710; presumption under section and nature of, S.C. 236; inference of illegal possession not justified by facts, 4 L.B.R. 314=9 Cr. L.J. 14; burden of proof, 8 Ind. Cas. 381. (c) Order of confiscation not appealable, 1 Weir 835. (d) Proof necessary for confiscation of hired conveyance, 1 Weir 835.

12. When the offender is convicted, or when the person charged

Order of confiscation by whom to be made.

with an offence in respect of any opium is acquitted, but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate.

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Collector of the district or Deputy Commissioner, or by any other officer authorized by the Local Government in this behalf, either personally or in right of his office, who may order such confiscation: Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

Power to make rules regarding disposal of things confiscated, and rewards.

13.(a) The Local Government may, with the previous sanction of the Governor General in Council, from time to time, by notification in the local Gazette, make rules consistent with this Act to regulate—

- (a) the disposal of all things confiscated under this Act; and
- (b) the rewards to be paid to officers and informers (b) out of the proceeds of fines and confiscations under this Act.

14. Any officer of any of the departments of Excise, Police, Customs,

Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.

Salt, Opium or Revenue, superior in rank to a peon or constable, who may in right of his office be authorized by the Local Government in this behalf, and who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under this

Act is manufactured, kept or concealed in any building, vessel or enclosed place^(a), may, between sunrise and sunset,—

- (a) enter into any such building, vessel or place;
- (b) in case of resistance, break open any door and remove any other obstacle to such entry;
- (c) seize such opium and all materials used in the manufacture thereof, and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium; and

Case-law :—(a) Scope of section, 13 P.R. 1894, Cr., distribution of penalties and the right of appeal to the High Court, 16 W.R. (Or.) 55=8 L.B.R. App. 7. (b) Measure of rewards and severity sentence, L.B.R. (1872-92) 567, 568. (c) Search by Excise officer, when justified, 5 L.B.R. 56=10 Cr. L.J. 85=2 Ind. Cas. 546; 105 P.L.R. 1900; search to be conducted in the presence of respectable witness, 4 L.B.R. 121=7 Cr. L.J. 87=14 Bur. L.R. 202; legality of conviction on discovery consequent on illegal search, 11 P.R. 1906, Cr.=118 P.L.R. 1907=4 Cr.L.J. 290; 30 P.R. 1880, Cr.; 4 L.B.R. 121=7 Cr. L.J. 87; 8 L.B.R. 229.

- (d) detain and search, and if he think proper, arrest, any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

Power to seize
opium in open
places.

15. Any officer (a) of any of the said departments may—

- (a) seize, in any open place or in transit (b), any opium or other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium ;

- (b) detain (c) and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

Power to detain,
search and arrest.

Searches how
made.

X of 1882.

16. All searches under section 14 or section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure, 1882.

17. The officers of the several departments mentioned in section 14 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Officers to assist
each other.

Vexatious entries,
searches, seizures
and arrests.

18. Any officer of any of the said departments who, without reasonable ground or suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person,

shall, for every such offence, be punished with fine not exceeding five hundred rupees.

19. The Collector of the district, Deputy Commissioner or other

officer authorized by the Local Government in this behalf, either personally or in right of his office, or a

Magistrate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search (d), whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed.

Case-law :—(a) Persons authorised to seize opium, 5 L.R.R. 56=10 Cr. L.J. 86 =2 Ind. Cas. 546. (b) Opium carried in boat temporarily anchored in transit, 5 L.B.R. 56=10 Cr. L.J. 85=2 Ind. Cas. 546; search without warrant when justified, 5 L.B.R. 56=10 Cr. L.J. 85=2 Ind. Cas. 546. (c) Arrest under section held legal, 43 C. 1161=17 Cr. L. J. 379=35 Ind. Cas. 811=20 C.W.N. 1294. (d) Search by Magistrate competent to issue search warrant, legality of, A.W.N. (1884) 213; search how to be made, U.B.R. (1872—1896), Vol. I, 135.

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1882. X of 1882.

20. Every person arrested, and thing seized, under section 14 or section 15, shall be forwarded without delay to the officer in charge of the nearest police-station; and every person arrested and thing seized under section 19 shall be forwarded without delay to the officer by whom the warrant was issued.

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or thing.

21. Whenever any officer makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

22. In the case of alleged illegal cultivation of the poppy, the crop shall not be removed, but shall, pending the disposal of the case, be attached by an officer superior in rank to a peon or constable, who may in right of his office be authorized by the Local Government in this behalf; and such officer shall require the cultivator to give bail in a reasonable amount (to be fixed by such officer) for his appearance before the Magistrate by whom the case is to be disposed of, and such cultivator shall not be arrested unless within a reasonable time he fails to give such bail:

Provided that, wherever Act No. XIII of 1857 (*An Act to consolidate and amend the law relating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal*) or any part thereof, is in force, nothing in this section shall apply to such cultivation.

23. Any arrear of any fee or duty imposed under this Act or any rule made hereunder, and any arrear due from any farmer of opium-revenue, may be recovered from the person primarily liable to pay the same to the Government or from his surety (if any) as if it were an arrear of land-revenue.

24. When any amount is due to a farmer of opium-revenue from his licensee, in respect of a license, such farmer may make an application to the Collector of the district, Deputy Commissioner or other officer authorized by the Local Government in this behalf, praying such officer to recover such amount on behalf of the applicant; and on receiving such application, such Collector, Deputy Commissioner or other officer may in his discretion recover such amount as if it were an arrear of land-revenue, and shall pay any amount so recovered to the applicant:

Provided that the execution of any process issued by such Collector, [1]Deputy Commissioner[1] or other officer for the recovery of such amount

Leg. Changes :—[1] Substituted by Act XII of 1891.

Paper Currency ACT II OF 1910 (PAPER CURRENCY).

shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer :

Provided also that nothing contained in this section or done thereunder shall affect the right of any farmer of opium-revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

25. When any person, in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty, or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, section 74 ; and, upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.

Recovery of penalties due under bond.

IX of 1872.

SCHEDULE.

[ENACTMENT REPEALED.]

Repealed by Act XII of 1891.

THE INDIAN PAPER CURRENCY ACT, 1910.

(ACT II OF 1910.)

[Passed on the 18th February, 1910.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1861	XIX	Paper Currency ...	Rep., Act III of 1871.
1866	I	Currency Act Amendment Act ...	Do. do.
1867	XXX	Paper Currency ...	Do. do.
1870	XV	Do. ...	Do. do.
1871	III	Do. ...	Do. Act XX of 1882.
1882	XX	Do. ...	Do. Act III of 1905.
1890	XV	Do. ...	Do. Act XXI of 1896.
1893	VIII	Coinage and Paper Currency ...	Rep. in part, Act III of 1905.
1896	XXI	Paper Currency ...	Rep., Act III of 1905.
1898	II	Do. ...	Do. Act VIII of 1900.
1898	VIII	Do. ...	Do. do.
1899	XXII	Coinage and Paper Currency ...	Rep. in part, Act III of 1905.
1900	VIII	Paper Currency ...	Rep., Act III of 1905.
1902	IX	Do. ...	Do. do.
1903	VI	Do. ...	Do. do.
1906	III	Do. ...	Do. Act II of 1910.
1909	II	Do. ...	Do. do.
1910	II	Paper Currency ...	Am., Act VII of 1911, Temp. Am., Act V of 1915. Rep. in part, Act X of 1914. Am., Act IX of 1916. " Acts XI & XIX of 1917. " Act XXVI of 1919.

*An Act to consolidate and amend the Law relating to the
Government Paper Currency.*

WHEREAS it is expedient to consolidate and amend the law relating to the Government Paper Currency ; It is hereby enacted as follows :—

Preliminary.

Short title and extent. 1. (1) This Act may be called the Indian Paper Currency Act, 1910 ; and

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti.

Definition. 2. In this Act, " universal currency note " means—

(a) a note of the denominational value of [1] one rupee, two and a half rupees [1] five rupees, ten rupees or fifty rupees, or

(b) a note of any other denominational value which the Governor General in Council may, by notification in the Gazette of India, specify in this behalf.

* * * *

Private Bills payable to Bearer on Demand.

26. No person in British India shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand (a), or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand, of any such person :

Prohibition of issue of private bills or notes payable to bearer on demand.

Provided that cheques or drafts, payable to bearer on demand or otherwise, may be drawn on bankers, shroffs or agents by their customers or constituents, in respect of deposits of money in the hands of those bankers, shroffs or agents and held by them at the credit and disposal of the persons drawing such cheques or drafts.

27. (1) Any person contravening the provisions of section 26 shall, on conviction by a Presidency Magistrate or a Magistrate of the first class, be punishable with a fine equal to the amount of the bill, hundi, note or engagement in respect whereof the offence is committed.

Penalty (b) for issuing such bills or notes and institution of prosecutions.

(2) Every prosecution under this section shall be instituted by the officer in charge of the circle of issue in which the bill, hundi, note or engagement is drawn, accepted, made or issued.

* * * *

Leg. Changes :—[1] Inserted by Act XIX of 1917.

Case-law :—(a) Promissory note to A, his order or bearer cannot be sued on as it offends against S. 26, 6 L.W. S.N. p. 15 following 40 M. 585 ; (1916) 2 M.W.N. 210=4 L.W. 261=31 M.L.J. 401=20 M.L.T. 350=36 Ind. Cas. 741 ; person making promissory note payable to bearer on demand infringes this section, 7 L.B.R. 70=7 Bur. L.T. 96=22 Ind. Cas. 77. (b) Provision of penalty does not cure invalidity as an instrument, the creation of which is prohibited by law cannot be held to be valid since no specific penalties are attached to its creation, (1916) 2 M.W.N. 210=4 L.W. 261=31 M.L.J. 401=20 M.L.T. 350=36 Ind. Cas. 741.

THE INDIAN PENAL CODE, 1860.

See VOLUME II.

THE PENAL SERVITUDE ACT, 1855.

(ACT XXIV OF 1855.)

[Passed on the 13th August, 1855.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1855	XXIV	Penal Servitude	Rep. in pt., Act XII of 1867.
			" " XIV of 1870.
			" " V of 1871.
			" " XVI of 1874.
			" " XII of 1876.
			" " XII of 1891.
			" " X of 1914.

An Act to substitute penal servitude for the punishment of Transportation in respect of European and American Convicts [1]* * *

WHEREAS, by reason of the difficulty of providing a place to which Europeans or Americans can, with safety to their health, be sent for the purpose of undergoing sentences of transportation or of imprisonment for long terms, it has become expedient to substitute other punishments for that of transportation [1]* * * * ; It is enacted as follows :—

1. [2]* * * No European or American shall be liable to be sentenced, or ordered, by any Court within the territories [2]* * * * under the Government of [2]* * * India [2]* to be transported.

2. Any person who, but for the passing of this Act, would, by any Law now in force, or which may hereafter be in force, in any part of the said territories, be liable to be sentenced or ordered, by any such Court, to be transported, shall, if a European or American, be liable to be sentenced or ordered to be kept in penal servitude^(a) for such term as hereinafter mentioned.

Leg. Changes:—[1] The words " and to amend the law relating to the removal of such convicts " in the title and the words " and to amend the law relating to the removal of European and American convicts for the purpose of imprisonment " in the preamble were repealed by Act XII of 1891. [2] The words " After the commencement of this Act," " The East," " Company " and " in the possession and " in S. 1. were respectively repealed by Act XVI of 1874 and Act XII of 1876.

Case-law :—(a) Not applicable to Europeans and Americans, 19 M. 488—1 Weir 298,

§. 12 ACT XXIV OF 1855 (PENAL SERVITUDE). Penal Servitude

The terms of penal servitude to be awarded by any sentence or order, instead of the term of transportation to which any such offender would, but for the passing of this Act, be liable, shall be as follows: (that is to say)—

Instead of transportation for seven years, or for a term not exceeding seven years, penal servitude for the term of four years.

Instead of any term of transportation exceeding seven years, and not exceeding ten years, penal servitude for any term not less than four and not exceeding six years.

Instead of any term of transportation exceeding ten years and not exceeding fifteen years, penal servitude for any term not less than six and not exceeding eight years.

Instead of any term of transportation exceeding fifteen years, penal servitude for any term not less than six and not exceeding ten years.

Instead of transportation for the term of life, penal servitude for the term of life.

And in every case where, at the discretion of the Court, one of any two or more of the terms of transportation hereinbefore mentioned might have been awarded, the Court shall have the like discretion to award one of the two or more terms of penal servitude hereinbefore mentioned, in relation to such terms of transportation.

3. Provided always that nothing herein contained shall interfere with or affect the authority or discretion of any Court in respect of any punishment which such Court may now award or pass on any offender other than transportation; but where such other punishment may be awarded at the discretion of the Court instead of transportation or in addition thereto, the same may be awarded instead of, or (as the case may be) in addition to, the punishment substituted for transportation by this Act.

Discretion of Courts as to alternative punishments.

4. If any offender sentenced by any Court within the said territories to the punishment of death shall have mercy extended to him, upon condition of his being kept in penal servitude for life, or for any term of years, all the provisions of this Act shall be applicable to such offender in the same manner as if he had been lawfully sentenced under this Act to the term of penal servitude specified in the condition.

Effect of pardon granted upon condition of penal servitude.

5, 6 and 7. [1] *	*	*	*
8. [2] *	*	*	*
9, 10, 11 and 12. [1]	*	*	*

Leg. Changes:—[1] Repealed by the Prisoners Act, 1871 (V of 1871). [2] Repealed by Act X of 1914.

13. Nothing in this Act is intended to alter or affect the provisions of the 12 & 13 Victoria, Chapter 43, or any Act of Parliament passed in the United Kingdom of Great Britain and Ireland since the 28th of August 1833, or which may hereafter be passed.

Act not to affect the provisions of certain English Statutes.

14. Any sentence or order upon any person describing him as a European or American shall be deemed, for the purposes of this Act, to be conclusive of the fact that such person is a European or American within the meaning of this Act.

Sentence when proof that a person is a European or an American.

15. The word "European," as used in this Act, shall be understood to include (a) any person usually designated a European British subject (b). [1] * * *

Interpretation-clause.

16. [2]

THE INDIAN PETROLEUM ACT, 1899. (ACT VIII OF 1899.)

[Passed on the 17th February, 1899.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1891	VIII	Petroleum	Rep., Act XII of 1886.
1886	XII	Do.	Rep., Act VIII of 1899
1890	XIV	Petroleum (Amending Act XII of 1886 Schedule).	Do. do.
1891	XII	Amending Act	Rep. (so much as Act XII of 1886) Act VIII of 1899.
1897	XIV	Indian Short Titles	Rep. (so much of Act XIV of 1890) Act VIII of 1899.
1898	VII	Petroleum	Rep., Act VIII of 1899.
1899	VIII	Petroleum	Rep. in pt., Act XI of 1901. Am. in pt., Act IV of 1914. Rep. in pt., Act X of 1914.

An Act to consolidate and amend the law relating to the importation, possession and transport of petroleum and other substances.

WHEREAS it is expedient to consolidate and amend the law relating to the importation, possession and transport of petroleum and other substances; It is hereby enacted as follows:—

Preliminary.

Short title, commencement and extent.

1. (1) This Act may be called the Indian Petroleum Act, 1899; [1]*

(2) [4]

* * * *

Leg. Changes:—[1] Repealed by Act X of 1914. [2] Repealed by the Repealing Act, 1870 (XIV of 1870).

Case-law:—(a) Means, 9 B.H.C. 99; 2 M. 5; 4 C. 492. (b) Proof of British born subject, 6 M.H.C. 7=2 Weir 11.

(3) Sections 1 to 3, section 25, and all the provisions of this Act in so far as they relate to dangerous petroleum and the importation of petroleum, extend to the whole of British India. The rest of this Act extends (a) only to such local areas as the Local Government may, by notification in the local official Gazette, direct.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "petroleum" includes also—

(i) the liquids commonly known by the names of rock oil, Rangoon oil, Burma oil, paraffin oil, mineral oil, kerosine, petroline, gasoline, benzoline, benzine and benzol ;

(ii) any inflammable liquid which is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any product of petroleum ; and

(iii) any liquid, or viscous mixture having in its composition any of the liquids aforesaid ;

but it does not include any oil ordinarily used for lubricating purposes and having its flashing point at or above two hundred degrees of Fahrenheit's thermometer ;

(b) "dangerous petroleum" means petroleum having its flashing point below seventy-six degrees of Fahrenheit's thermometer :

Provided that, when all or any of the petroleum on board a ship, or in the possession of a dealer, is declared by the master of the ship or the consignee of the cargo, or by the dealer, as the case may be, to be of one uniform quality, the petroleum shall not be deemed to be dangerous, if the samples selected from the petroleum have their flashing points, on an average, at or above seventy-three degrees of Fahrenheit's thermometer, and if no one of these samples has its flashing point below seventy degrees of that thermometer :

(c) to "import" means to bring into British India by sea or land :

(d) to "transport" means to remove within British India from one place to another :

(e) "prescribed" means prescribed by rules made under this Act : and

(f) "ship" includes anything made for the conveyance by water of human beings or property.

3. (1) The "flashing point" of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested in accordance with the directions in the first schedule with an apparatus which has been stamped and certified

Matters supplemental to definitions.

Case-law :—(a) While present Act re-enacting provision as to local extent found in the Act of 1886, does not expressly preserve notifications under old Act, 7 C.W.N. 658.

as provided by this Act within a period of five years immediately preceding the date on which the apparatus is used for the testing, and after the corrections (if any) which the certificate declares are to be applied to the results of the testing, have been made.

(2) Notwithstanding anything in the definitions of "import" and "transport," the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, declare—

(a) that petroleum imported into the Province from any part of British India, by sea or across intervening territory not being part of British India, shall, for all or any of the purposes of this Act, be deemed to be transported; and

(b) that petroleum transported into the Province from any place in British India shall, for all or any of those purposes, be deemed to be imported;

and thereupon the provisions of this Act and of the rules made under this Act, with respect to transport and import, respectively, shall apply to petroleum so imported or transported.

4. (1) The Governor General in Council may, by notification in the Gazette of India, alter or add to the first schedule by laying down new or varied tests and directions for preparing and using them; and, after the issue of any such notification as aforesaid, the reference in section 3, sub-section (1), to the first schedule shall be construed as referring to the said schedule as so altered or added to for the time being.

Power to vary tests and prescribe new tests.

(2) The Governor General in Council may, in like manner, lay down special tests and issue special instructions in respect of the testing of any substance other than petroleum to which the whole or any portion of this Act may be applied in exercise of the power conferred by section 22, and for which the tests in the first schedule are unsuitable.

X of 1897.

(3) The provisions of section 23 of the General Clauses Act, 1897, shall apply to notifications under this section as if they were rules or orders required to be made after previous publication.

Dangerous Petroleum.

5. (1) No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported or kept by any one person or on the same premises, except under, and in accordance with the conditions (if any) of, a license from the Local Government [1] or an officer appointed by the Local Government in this behalf.[1]

Dangerous petroleum in quantities exceeding forty gallons.

(2) Every application for such a license shall be in writing in the prescribed form, and shall contain the prescribed particulars.

Dangerous petroleum in quantities not exceeding forty gallons.

6. No quantity of dangerous petroleum equal to, or less than, forty gallons shall be kept or transported without a license :

Provided that nothing in this section shall apply in any case where the quantity of the petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and the petroleum is placed in separate glass, stoneware or metal vessels, each of which contains not more than a pint and is securely stopped.

Vessels containing dangerous petroleum to be labelled.

7. Dangerous petroleum—

- (a) which is imported and is kept at any place after seven days from the date of its importation, or
- (b) which is transported, or
- (c) which is sold or exposed for sale,

shall be contained in vessels having attached thereto labels in conspicuous characters stating the description of the petroleum, with the addition of the words "highly inflammable" and with the addition,—

- (d) in the case of a vessel kept, of the name and address of the consignee or owner ;
- (e) in the case of a vessel transported, of the name and address of the sender ; and,
- (f) in the case of a vessel sold or exposed for sale, of the name and address of the vendor.

Petroleum generally.

Power for Governor General in Council to make rules.

8. (1) The Governor General in Council may make rules to carry out the purposes and objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for the granting of licenses to transport (a) petroleum from any part of British India to any other part of British India in cases in which such licenses are by law required.

Power for Local Government to make rules.

9. (1) The Local Government, with the previous sanction of the Governor General in Council, may make rules to regulate the importation of petroleum and the granting of licenses to possess or to transport petroleum within the Province in cases in which such licenses are by law required.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) determine the ports at which alone petroleum may be imported ;
- (b) provide for ascertaining the quantity and description of any petroleum on board any ship ;

Case-law :—(a) Petroleum imported by land into British India from territory beyond it, Rat. Un. Cr. C. 648.

- (c) determine the places at which, and the conditions on and subject to which, petroleum may be discharged into boats, landed, transhipped or stored ;
- (d) provide for the selection by an officer appointed by the Local Government in this behalf, and for the delivery to him, either after or before petroleum has been landed, of samples of all petroleum landed or intended to be landed ;
- (e) provide, in the case of each consignment which is stated to be of one uniform quality, for the number of samples to be selected, and for the averaging of the results of the testing of those samples ;
- (f) provide, where the results of the testing of the samples raise a doubt as to the uniformity of the quality of the petroleum in any such consignment, for the division of the consignment into lots, and for the selection and testing of samples of each lot, and for the treatment of the lot in accordance with the results of the testing of those samples ;
- (g) fix fees for the sampling and testing of petroleum ;
- (h) fix fees for the storage of petroleum unless any local authority is empowered in that behalf ;
- (i) define, with respect to any petroleum produced within the Province, the limits of the places in which such petroleum is to be refined ;
- (j) provide for the testing at or near those places of petroleum so produced ;
- (k) prevent the removal from those limits, otherwise than under the provisions of this Act applicable to dangerous petroleum, of petroleum so produced which has not satisfied the prescribed tests ;
- (l) prescribe the authority by which licenses to possess or to transport petroleum may be granted ;
- (m) fix the fee to be charged for any such license ;
- (n) limit the quantity of petroleum to be covered by any such license ;
- (o) prescribe the conditions which may be inserted in any such license ;
- (p) limit the time during which any such license is to continue in force ;
- (q) provide for the renewal of any such license ;
- (r) provide for the nature and situation of the premises in respect of which licenses to possess petroleum may be granted, the inspection of premises so licensed and the testing of petroleum found thereon ; and
- (s) prescribe the manner in which the petroleum covered by a license to transport is to be packed, the mode and time of its transit, the route by which it is to be taken, and its stoppage and inspection during transit.

10. (1) Petroleum discharged into boats or landed in accordance with rules made under section 9, sub-section (2), shall not be removed from the boats or places in or at which it is stored until the samples selected therefrom in accordance with those rules have been tested by an officer appointed by the Local Government in this behalf and the officer has given a certificate that the petroleum is not dangerous petroleum.

(2) If the officer, after testing the samples, refuses to give the certificate in respect of any petroleum, the Local Government may permit the consignee, within a time to be fixed by the Local Government in this behalf,—

- (a) to rectify the petroleum,
- (b) to apply for a license to import the petroleum as dangerous petroleum, or
- (c) to re-export the petroleum.

(3) If the consignee does not, within the time fixed under sub-section (2), avail himself of the permission granted under that sub-section, the petroleum may be disposed of as the Local Government may direct.

(4) Notwithstanding anything in the foregoing provisions of this section, the Local Government, in its discretion, may, where the officer has refused the certificate, direct that the petroleum be re-tested by another officer appointed by it in this behalf, and may, if that officer advises that the petroleum is not dangerous petroleum, authorize its removal from the boats or places in or at which it is stored.

11. No quantity of petroleum exceeding five hundred gallons shall be kept by any one person or on the same premises, or shall be transported^(b), except under, and in accordance with the conditions of, a license granted under this Act :

Provided that the Local Government may, by notification in the local official Gazette, exempt from the operation of this section petroleum when transported in such particular manner and under such particular conditions as may be set forth in the notification.

12. Any officer specially authorized in this behalf by the Local Government may require any dealer in petroleum to show him any place and any of the vessels in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of the petroleum on payment of the value of the samples.

Case law :—(a) Possession must be such as to amount to 'keeping' within the meaning of S. 11, (1917) M.W.N. 720=18 Cr. L.J. 627=39 Ind. Cas. 995. (b) Transporting at a time more than quantity of petroleum allowed by law and liability of principal for acts done by agent or servant, 17 O.W.N. 207=17 C.L.J. 390=13 Cr. L.J. 792=17 Ind. Cas. 535=40 O. 356.

13. When any such officer has, in exercise of the powers conferred by section 12, or by purchase, obtained a sample of petroleum in the possession of a dealer, he may give a notice in writing to the dealer informing him that he is about to test the sample, or cause it to be tested, at a time and place to be fixed in the notice, and that the dealer or his agent may be present at the testing.

Notice to be given when officer proposes to test samples.

14. On any such testing, if it appears to the officer or other person so testing that the petroleum from which the sample has been taken, is or is not dangerous petroleum, the officer or other person may certify the fact; and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession the petroleum was found, and shall, until the contrary is proved, be proof of the fact stated therein, and a certified copy of the certificate shall be given, free of charge, to the dealer at his request.

Certificate as to result of testing.

Penalties.

Penalty for illegal importation, possession or transport of petroleum or for refusal to comply with section 12.

15. Whoever,—

- (a) in contravention of this Act or of any of the rules thereunder, imports, possesses or transports any petroleum (a); or
- (b) otherwise contravenes any such rules as aforesaid; or
- (c) breaks any condition contained in a license granted under this Act; or
- (d) being a dealer in petroleum, refuses or neglects to show to any officer authorized under section 12 any place or any of the vessels in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same, or to give him samples of the petroleum on payment of the value of the samples;

shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Penalty for contravention of section 7.

16. Whoever keeps, sells or exposes for sale dangerous petroleum in vessels not labelled as prescribed by section 7 shall be punishable with fine which may extend to five hundred rupees.

Confiscation of petroleum.

17. In any case in which an offence under section 15, clause (a), clause (b), or clause (c), or section 16 has been committed, the convicting Magistrate may direct that—

- (a) the petroleum in respect of which the offence has been committed, or

Case-law :—(a) Principal not responsible for acts of agents or servants, 17 C.W.N. [907 = 17 O.L.J. 890=13 Cr. L. J. 792=17 Ind. Cas. 535=40 C. 356; on account of notification of 1891 being made applicable to Cuttack by present Act conviction for possession of kerosine oil exceeding statutory quantity at Cuttack, 7 C.W.N. 658.

- (b) where the offender is importing or transporting, or is in possession of, any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing or transporting or is in possession of,

shall, together with the tins or other vessels in which it is contained, be confiscated.

18. The criminal jurisdiction under this Act shall, in the Presidency-towns, be exercised by a Presidency Magistrate, and, elsewhere, by a Magistrate of the first class or (where specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class.

Test-apparatus.

19. A model of the apparatus for testing petroleum under this Act shall be deposited in the office of the Chemical Examiner to Government, Calcutta, and be marked with the words "Model test-apparatus."

20. (1) The Chemical Examiner shall, on payment of the prescribed fee (if any), compare with the said model test-apparatus and verify every apparatus for testing petroleum which is submitted to him for the purpose.

(2) If any apparatus for testing petroleum, when compared and verified as provided by sub-section (1), is found correct, or correct subject to certain corrections to be applied to the results of the tests, the Chemical Examiner shall stamp the same with a special number and with the date of the verification, and shall further give a certificate in writing under his hand, in the prescribed form, to the effect that on the date aforesaid the apparatus was compared and verified by him and found to be correct, or correct subject to certain specified corrections to be applied to the results of the tests.

(3) A certificate granted under this section shall, until the contrary is proved, be proof of the matters stated therein.

(4) The Chemical Examiner shall keep a register, in the prescribed form, of all certificates granted under this section.

(5) Subject to the payment of the prescribed fees (if any), the said model test-apparatus shall be at all reasonable times open to inspection by any person desiring to inspect it.

Miscellaneous.

21. The Local Government may, by notification in the local official Gazette, exempt from the operation of all or any of the provisions of this Act, or of all or any of the rules made under this Act, any petroleum which has its flashing point at or above one hundred and twenty degrees of Fahrenheit's thermometer and is imported as ordinary cargo and in quantity not exceeding that specified in the notification.

22. (1) The Governor General in Council may, by notification in the Gazette of India, apply the whole or any portion of this Act to any substance, other than petroleum, and may by the notification fix in substitution for the quantities of petroleum fixed by sections 5, 6 and 11, the quantities of the substance to which those sections shall apply.

Power to apply Act to other substances.

(2) When the whole or any portion of this Act has been applied as aforesaid to any substance other than petroleum, the provisions so applied shall be construed with all necessary modifications and shall have effect as if such other substance had been included in the definition of petroleum.

23. The Governor General in Council may, by notification in the Gazette of India and in the local official Gazette, limit, in any manner he deems fit, the operation of any enactment for the time being in force relating to local authorities in any local area or to any particular local authority, and the exercise of any power conferred by any such enactment, in so far as the enactment relates to the possession or transport of petroleum.

Power to limit operation of enactments relating to possession or transport of petroleum in municipalities.

24. (1) Every power to make rules conferred by this Act is subject to the condition of the rules being made after previous publication in such manner as the Governor General in Council may, by notification in the Gazette of India, direct.

Previous publication, etc., of rules.

(2) All rules made by the Governor General in Council or by the Local Government under this Act shall be published in the Gazette of India or the local official Gazette, as the case may be, and on such publication shall have effect as if enacted by this Act.

Repeal.

25. [1] * * *

THE FIRST SCHEDULE.

TESTING.

(See section 3.)

I.—Nature of the Test-apparatus.

The apparatus consists of the following parts:—

- (1) the oil-cup;
- (2) the cover, with slide, test-lamp, and clockwork arrangement for opening and closing the holes in the cover and for dipping the test flame;
- (3) the water-bath or heating vessel;
- (4) the tripod stand with jacket and spirit-lamp for heating the water-bath;
- (5) the thermometer for indicating the temperature of the oil in the oil-cup;
- (6) the thermometer for indicating the temperature of the water in the water-bath;

Leg. Changes:—[1] Repealed by Act X of 1914.

- (7) the thermometer for indicating the temperature of the oil before it is poured into the oil-cup ;
- (8) the dropping bottle or *pipette* for replenishing the test-lamp ; and
- (9) a barometer standardised at the Meteorological Office of the Province or at any other place appointed by the Local Government.

The oil-cup is a cylindrical flat-bottomed vessel made of gun-metal or brass, and tinned or silvered inside. A gauge is fixed to the inside of the cup to regulate the height to which it is to be filled with the sample under examination.

The cup is provided with a close-fitting overlapping cover, which carries the thermometer, the test-lamp and the adjuncts thereto. The test-lamp is suspended upon two supports by means of trunnions, which allow it to be easily inclined to a particular angle and restored to its original position. The socket in the cover, which is to hold a round bulb thermometer for indicating the temperature of the oil during the testing operation, is so adjusted that the bulb of the latter is always inserted in a definite position below the surface of the liquid.

The cover is provided with three holes, one in the centre and two smaller ones close to the sides. These are closed and opened by means of a pivoted slide. When the slide is moved so as to uncover the holes, the suspended lamp is caught by a projection fixed on the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. As the slide moves back so as to cover the holes, the lamp returns to its original position. Upon the cover, in front of and in a line with the nozzle of the lamp, is fixed a white bead, the diameter of which represents the size of the test-flame to be used.

The water-bath or heating vessel is so constructed that, when the oil-cup is placed in position in it, an air-space or air-chamber intervenes between the two : consequently, in applying the test under ordinary circumstances, the heat is transmitted gradually to the oil from the hot water through the air-space. The water-bath is fitted with a socket for receiving a long bulb thermometer, to indicate the temperature of the water. It is also provided with a funnel, an overflow-pipe and two handles.

The water-bath rests upon a tripod stand, which is fitted with a copper cylinder or jacket, so that the bath is surrounded by an enclosed air space, which retains and regulates the heat. One of the legs of the stand serves as a support for a spirit-lamp, which is attached to it by a small swing bracket.

The clockwork arrangement, by which during the operation of testing the slide is withdrawn and the test-flame dipped into the cup and raised again as the slide is replaced, is provided with a ratchet key for setting it in action for each test, and with a trigger for starting it each time that the test-flame is applied.

II.—*Directions for drawing the Sample and preparing it for testing.*

1. *Drawing the sample.*—In all cases the testing officer or some person duly authorized by him shall personally superintend the drawing of the sample from an original unopened tin or other vessel.

An opening sufficiently large to admit of the oil being rapidly poured or cyphoned from the tin or other vessel shall be made.

Two bottles, each of the capacity of about forty fluid ounces, are to be filled with the oil. One of these, the contents of which is intended to be preserved for reference in case of need, is to be carefully corked, the cork being well driven home, cut off level with the neck, and melted sealing-wax worked into it. The other bottle may be either stoppered or corked.

2. *Preparing the sample for testing.*—About ten fluid ounces of the oil, sufficient for three tests, are transferred from the bottle into which the sample has been drawn to a pint-flask or bottle, which is to be immersed in water artificially cooled until a thermometer, introduced into the oil, indicates a temperature not exceeding 50° Fahrenheit.

III.—Directions for preparing and using the Test-apparatus.

1. *Preparing the water-bath.*—The water-bath is filled by pouring water into the funnel until it begins to flow out at the overflow-pipe. The temperature of the water at the commencement of each test, as indicated by the long bulb thermometer, is to be 130° Fahrenheit, and this is attained in the first instance by mixing hot and cold water, either in the bath or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or the water is heated by means of the spirit-lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

2. *Preparing the test-lamp.*—The test-lamp is fitted with a piece of cylindrical wick of such thickness that it fills the wick-holder, but may readily be moved to and fro for the purpose of adjusting the size of the flame. In the body of the lamp, upon the wick, which is coiled within it, is placed a small tuft of cotton wool, moistened with petroleum, any oil not absorbed by the wool being removed. When the lamp has been lighted the wick is adjusted by means of a pair of forceps until the flame is of the size of the bead fixed on the cover of the oil-cup; should a particular test occupy so long a time that the flame begins to get smaller, through the supply of oil in the lamp becoming exhausted, three or four drops of petroleum are allowed to fall upon the tuft of wool in the lamp from the dropping bottle or *pipette* provided for that purpose. This can be safely done without interrupting the test.

3. *Filling the oil-cup.*—The oil-cup having been previously cooled, by placing it bottom downwards in water at a temperature not exceeding 50° Fahrenheit, is to be rapidly wiped dry, placed on a level surface in a good light, and the oil to be tested is poured in very slowly, without splashing, until its surface is level with the point of the gauge which is fixed in the cup. The round bulb thermometer is inserted into the lid of the cup, care being taken that the projecting rim of the collar touches the edge of the socket; the test-lamp, prepared as already described, is placed in position, and the cover is then put on to the cup and pressed down so that its edge rests on the rim of the cup.

4. *Application of the test.*—The water-bath, with its thermometer in position, is placed in some locality where it is not exposed to currents

of air, and where the light is sufficiently subdued to admit of the size of the entire test-flame being compared with that of the bead on the cover. The cup is carefully lifted without shaking it, and placed in the bath, the test-lamp is lighted, and the clockwork wound up by turning the key. The thermometer in the oil-cup is now watched, and, when the temperature has reached 56° Fahrenheit, the clockwork is set in motion by pressing the trigger.

If no flash takes place, the clockwork is at once rewound and the trigger pressed at 57° Fahrenheit, and so on, at every degree rise of temperature, until the flash occurs, or until a temperature of 95° Fahrenheit has been reached.

If the flash takes place at any temperature below 77° Fahrenheit, the temperature at which it occurs is to be recorded. Two fresh portions of the sample are then to be successively tested in a similar manner and the results recorded. If no greater difference than 2° Fahrenheit exists between any two of the three recorded results, and if in no instance the flash has taken place within eight degrees of the temperature at which the testing is commenced, each result is to be corrected for atmospheric pressure as hereafter described, and the average of the three corrected results is the flashing point of the sample. In the event of there being a greater difference than 2° Fahrenheit between any two of the results, while in no instance has the flash taken place within eight degrees of the temperature at which the testing was commenced, the series of tests is to be rejected, and a fresh series of three similarly obtained, and so on, until a sufficiently concordant series is furnished, when the results are to be corrected and the average taken in the manner already described.

If, however, a flash has occurred at or below 60° when the test is applied in the manner above described, the next testing shall be commenced ten degrees lower than the temperature at which the flash had been previously obtained (that is to say, at 54° or thereunder), and this procedure shall be continued until the results of three consecutive tests do not show a greater difference than 2° and until a flash has not occurred in any of the three tests within eight degrees of the temperature at which the testing is commenced: Provided always that, if at the commencement of the series of tests a flash has occurred on the first application of the test-flame at 56°, and if a flash has also occurred on the first application of the flame in each of three successive tests in which, thereupon, the test-flame is first applied at 46° as above directed, the testing officer shall certify that the petroleum has a flashing point below 47°, and the sample shall be reported dangerous.

If a temperature of 76° Fahrenheit has been reached without a flash occurring, the application of the test-flame is to be continued at every degree rise of temperature until a temperature of 95° Fahrenheit has been reached. If no flash has occurred up to this point, and if the petroleum is declared to be imported subject to the provisions of the Act, the tests shall not be continued, and the testing officer shall certify that the petroleum has a flashing point over 95° and is not dangerous. But, if the petroleum is oil ordinarily used for lubricating purposes and is declared to have its flashing point at or above 200° or is oil to which a notification of a Local Government exempting it from the

operation of the Act will be applicable in the event of the flashing point being found to be at or above 120°, the test shall be continued as follows:—The oil-cup is to be removed from the water-bath, and the temperature of the water in the water-bath is to be reduced to 95° Fahrenheit by pouring cold water into the funnel (the hot water escaping by the overflow-pipe). The air-chamber is then to be filled to a depth of 1½ inches with water at a temperature of about 95° Fahrenheit, the oil-cup is to be replaced in the water-bath and the spirit-lamp attached to the water-bath is to be lighted and placed underneath. The test-flame is then to be again applied, from 96° Fahrenheit, at every degree rise of temperature as indicated by the thermometer in the oil-cup until a flash takes place or until a temperature of 200° Fahrenheit, or 120° Fahrenheit, as the case may be, has been reached. If during this operation the test-flame appears to diminish in size, the lamp is to be replenished in the manner prescribed at 2 without interrupting the test.

If a flash occurs at any temperature between 76° and 200° Fahrenheit the temperature at which it occurs, subject to correction for atmospheric pressure, is the flashing point of the sample.

In repeating a test a fresh sample of oil must always be used, the tested sample being thrown away, and the cup must be wiped dry from any adhering oil and cooled, as already described, before receiving the fresh sample.

5. *Correction for atmospheric pressure.*—As the flashing point of an oil is influenced by changes in atmospheric pressure to an average extent of 1·6° Fahrenheit for every inch of the barometer, a correction of the observed flashing point may become necessary. The height of the barometer must therefore be determined at the time of making the test for the flashing point. The true height of the barometer for the purpose of the test shall be considered to be the height of the column of mercury measured at 32° Fahrenheit, which is supported by the air pressure at the time of the experiment; that is, the actual height of the barometer at the time of observation duly corrected for any error of the instrument and for its temperature if necessary. For the purpose of applying the correction to the flashing point of the oil obtained by the test, a table is appended to this schedule giving the flashing points of oils ranging from 65° to 80° Fahrenheit, under pressure ranging from 27 to 31 inches of mercury.

The table is used in the following manner:—

Example.—An oil has given a flashing point of 71°, the barometer being at 28·6 inches; take the nearest number to 71° in the vertical column headed 28·6. This number is 70·8. Substitute for this number in the same horizontal line in the column headed 30 (the normal height of the barometer). The substituted number, that is, the true flashing point of the oil, is 73°.

[1] 6. Application of the test to viscous fluids or preparations such as solutions of india-rubber in mineral naphtha, or thick paint made with that material.[1]

About a teaspoonful of the substance to be tested is placed in the cup, and the cover fitted with a thermometer is put on.

Leg. Changes:—[1] This paragraph was added by Notification No. 928 (J), dated the 28th June, 1900.

The cup thus prepared for the test is then cooled down until the thermometer indicates a temperature of 50° F. This may be accomplished either by placing the prepared cup in a refrigerator, or by immersing it up to its projecting collar in water which is maintained at a sufficiently low temperature until the result specified has been obtained.

The prepared cup thus cooled is then transferred to the water-bath, the temperature of which has previously been raised to 76° F. (The scale of the thermometer in the water-bath should range from 60° to 180° F.)

The test is then applied as described in section 4 of this part. If no flash has taken place when the temperature in the cup has reached 75°, the test need not be continued.

The temperature at which the flash occurs is the observed flashing point of the substance and, subject to correction of atmospheric pressure as prescribed in the Act, is the true flashing point.

IV.—Directions for determining the flashing point of petroleum which is not fluid at ordinary temperatures.

1. *Nature of the test-apparatus.*—The instrument employed is the Abel-Pensky petroleum testing apparatus, fitted with an additional thermometer to indicate the temperature of the oil in close proximity to the walls of the cup. This thermometer has a cylindrical bulb, $\frac{7}{8}$ inch in length and $\frac{3}{16}$ inch in diameter. It is scaled from 45° to 165° Fahrenheit, ten degrees on the scale occupying $\frac{3}{8}$ inch. The thermometer is held vertically in a socket attached to the cover of the oil-cup in such a position that the bulb is $\frac{1}{10}$ inch from the side of the cup.

(The thermometer can be removed and the orifice which is provided for it closed by means of an india-rubber plug, if the apparatus is required for testing petroleum in the ordinary way.)

2. *Directions for preparing the sample for testing.*—About ten fluid ounces of the oil are placed in a pint-flask, the mouth of which is then closed with an india-rubber stopper and the sample is liquefied by placing the flask in a water-bath, the temperature of which is only raised sufficiently high to liquefy the oil.

3. *Directions for preparing and using the test-apparatus.*—The water-bath and test-lamp are to be prepared in the manner prescribed in Part III of this Schedule. The oil-cup is to be filled with the liquefied oil, and the cover (into which both thermometers are to be previously inserted) placed on it, care being taken that the bulb of the additional thermometer is not brought into contact with the bracket-gauge fixed inside the cup. The oil-cup is then to be placed in a refrigerator, or plunged up to the projecting collar in water maintained at sufficiently low temperature, until both thermometers indicate the temperature at which the testing of petroleum is directed in Part III of this Schedule to be commenced. The oil-cup is then to be removed, wiped dry and placed in the water-bath, and the testing effected in the manner prescribed in Part III of this Schedule, the temperature indicated by the additional (vertical) thermometer alone being noted, and the average of three determinations, duly corrected for atmospheric pressure, being recorded as the flashing point of the sample, provided that no greater difference than 4° Fahrenheit exists between any two of such results.

Table for correction of Flashing Points indicated by the test for Variations in Barometric Pressure on either side of Thirty Inches.

Barometer in inches.

	27	27.2	27.4	27.6	27.8	28	28.2	28.4	28.6	28.8	29	29.2	29.4	29.6	29.8	30	30.2	30.4	30.6	30.8	31
Flashing Point in Degrees Fahrenheit.																					
60.3	60.5	60.8	61.2	61.5	61.8	62.1	62.4	62.8	63.1	63.4	63.7	64	64.4	64.7	65	65.3	65.6	66	66.3	66.6	66.9
61.2	61.5	61.8	62.2	62.5	62.8	63.1	63.4	63.8	64.1	64.4	64.7	65	65.4	65.7	66	66.3	66.6	67	67.3	67.6	67.9
62.2	62.5	62.8	63.2	63.5	63.8	64.1	64.4	64.8	65.1	65.4	65.7	66	66.4	66.7	67	67.3	67.6	68	68.3	68.6	68.9
63.2	63.5	63.8	64.2	64.5	64.8	65.1	65.4	65.8	66.1	66.4	66.7	67	67.4	67.7	68	68.3	68.6	69	69.3	69.6	69.9
64.2	64.5	64.8	65.2	65.5	65.8	66.1	66.4	66.8	67.1	67.4	67.7	68	68.4	68.7	69	69.3	69.6	70	70.3	70.6	70.9
65.2	65.5	65.8	66.2	66.5	66.8	67.1	67.4	67.8	68.1	68.4	68.7	69	69.4	69.7	70	70.3	70.6	71	71.3	71.6	71.9
66.2	66.5	66.8	67.2	67.5	67.8	68.1	68.4	68.8	69.1	69.4	69.7	70	70.4	70.7	71	71.3	71.6	72	72.3	72.6	72.9
67.2	67.5	67.8	68.2	68.5	68.8	69.1	69.4	69.8	70.1	70.4	70.7	71	71.4	71.7	72	72.3	72.6	73	73.3	73.6	73.9
68.2	68.5	68.8	69.2	69.5	69.8	70.1	70.4	70.8	71.1	71.4	71.7	72	72.4	72.7	73	73.3	73.6	74	74.3	74.6	74.9
69.2	69.5	69.8	70.2	70.5	70.8	71.1	71.4	71.8	72.1	72.4	72.7	73	73.4	73.7	74	74.3	74.6	75	75.3	75.6	75.9
70.2	70.5	70.8	71.2	71.5	71.8	72.1	72.4	72.8	73.1	73.4	73.7	74	74.4	74.7	75	75.3	75.6	76	76.3	76.6	76.9
71.2	71.5	71.8	72.2	72.5	72.8	73.1	73.4	73.8	74.1	74.4	74.7	75	75.4	75.7	76	76.3	76.6	77	77.3	77.6	77.9
72.2	72.5	72.8	73.2	73.5	73.8	74.1	74.4	74.8	75.1	75.4	75.7	76	76.4	76.7	77	77.3	77.6	78	78.3	78.6	78.9
73.2	73.5	73.8	74.2	74.5	74.8	75.1	75.4	75.8	76.1	76.4	76.7	77	77.4	77.7	78	78.3	78.6	79	79.3	79.6	79.9
74.2	74.5	74.8	75.2	75.5	75.8	76.1	76.4	76.8	77.1	77.4	77.7	78	78.4	78.7	79	79.3	79.6	80	80.3	80.6	80.9
75.2	75.5	75.8	76.2	76.5	76.8	77.1	77.4	77.8	78.1	78.4	78.7	79	79.4	79.7	80	80.3	80.6	81	81.3	81.6	81.9

THE SECOND SCHEDULE.

[1] * * *

Leg Changes:—[1] Repealed by Act X of 1914.

THE PILGRIM SHIPS ACT, 1895.

(ACT XIV OF 1895.)

[Passed on the 4th October, 1895.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1895	XIV	Pilgrim Ships	... Am., Act IV of 1914.

An Act to make better provision for the regulation of Pilgrim Ships.

WHEREAS it is expedient to make better provision for the regulation of pilgrim ships; It is hereby enacted as follows:—

Preliminary.

Title. 1. This Act may be called the Pilgrim Ships Act, 1895.

Extent and appli- 2. (1) It extends to the whole of British India,
cation, and applies—

- (a) to all subjects of Her Majesty within the dominions of Princes and States in India under the suzerainty of Her Majesty;
- (b) to all native Indian subjects of Her Majesty without and beyond British India; and,
- (c) subject to the exceptions mentioned in sub-section (2), to every pilgrim ship as hereinafter defined.

(2) But it does not apply—

- (i) to any ship-of-war, troopship, transport or other ship belonging to the Royal Navy or Royal Indian Marine Service, or
- (ii) to any other ship for the time being in the service of Her Majesty, or
- (iii) to any ship-of-war belonging to any Foreign Prince or State, or
- (iv) to any ship not being a pilgrim ship.

3. This Act shall come into force on such day as the Governor General in Council may, by notification in the Gazette of India, appoint in this behalf.

Repeal of Act X. 4. On and from that day nothing contained in
1887, so far as re- the Native Passenger Ships Act, 1887, shall apply to
gards pilgrim ships. any pilgrim ship.

Definitions. 5. In this Act, unless there is anything repugnant in the subject or context,—

(1) “ pilgrim ” means a Muhammadan passenger going to, or returning from, the Hedjaz; but it does not include a child under one year of age, and in the computation of pilgrims for all or any of the purposes of this Act the Governor General in Council may, by notification in the Gazette of India, direct that two persons of the age of one year or

upwards and under the age of twelve years shall be reckoned as one pilgrim.

Explanation.—A Muhammadan passenger who has embarked with the intention of going to the Hedjaz, but is returning without having actually landed there, shall be deemed to be a pilgrim for the purposes of this Act:

(2) "pilgrim ship" means a ship conveying or about to convey pilgrims from or to any port in British India to or from any port in the Red Sea other than Suez:

Provided that no ship carrying passengers other than pilgrims of the lowest class and having on board pilgrims of the lowest class in a less proportion than one pilgrim for every one hundred tons of the gross tonnage of the ship shall be deemed to be a pilgrim ship within the meaning of this Act:

Explanation.—A "pilgrim of the lowest class" is a pilgrim for whom no separate accommodation in any cabin, state-room or saloon is reserved:

(3) "voyage" means the whole distance between a pilgrim ship's port or place of departure and her final port or place of arrival:

(4) "Chief Customs-officer" means the chief executive officer of sea-customs for any port or place to which this Act applies:

(5) "Magistrate" means a person exercising powers not inferior to those of a Magistrate of the second class: and

(6) "prescribed" means prescribed by rules made by the Governor-General in Council under this Act.

All passengers on pilgrim ships to be deemed pilgrims.

6. Every passenger, whether a pilgrim or not, on board a pilgrim ship shall be deemed to be a pilgrim for the purposes of this Act.

Rules for Voyages of Pilgrim Ships.

Pilgrim ships to sail only from places appointed by the Government.

7. (1) No pilgrim ship shall depart or proceed from, or discharge pilgrims at, any port or place within British India other than a port or place appointed in this behalf by the Local Government.

(2) After a pilgrim ship has departed or proceeded on a voyage from a port or place so appointed, no person shall be received on board as a pilgrim except at some other port or place so appointed.

8. (1) The master, owner or agent of a pilgrim ship so departing or proceeding shall give notice to an officer appointed in this behalf by the Local Government that she is to carry pilgrims, and of her destination, and of the proposed time of sailing.

Notice to be given of time of sailing.

(2) The notice shall be given at the original port of departure if in British India and in other cases at the first port at which she touches in British India, not less than three days, and at all other ports of call not less than twenty-four hours, before that time.

Power to enter on and inspect pilgrim ship.

9. After receiving the notice, the officer aforesaid or a person authorized by him shall be at liberty at all times to enter on the ship and inspect her and her fittings and the provisions and stores on board.

Pilgrim ship not to sail without two certificates. **10.** (1) No pilgrim ship shall commence a voyage from a port or place appointed under this Act, unless the master holds two certificates to the effect mentioned in the two next following sections.

(2) The officer whose duty it is to grant a port-clearance shall not grant it unless the master holds those certificates.

Contents of certificate A. **11.** The first of the certificates (hereinafter called "certificate A") shall state that the ship is seaworthy and properly equipped, fitted and ventilated, and the number of pilgrims of each class which she is capable of carrying.

Contents of certificate B. **12.** The second of the certificates (hereinafter called "certificate B") shall state—

- (a) the voyage which the ship is to make, and the intermediate ports (if any) at which she is to touch ;
- (b) that she has the proper complement of officers and seamen ;
- (c) that food, fuel and pure water over and above what is necessary for the crew, and the other things (if any) prescribed for pilgrim ships have been placed on board, of the quality prescribed, properly packed, and sufficient to supply the pilgrims on board during the voyage which she is to make (including such detention in quarantine as may be probable) according to the scale for the time being prescribed ;
- (d) that the master holds certificate A ;
- (e) that she is propelled principally by steam ;
- (f) that she is of the tonnage and steam-power (if any) prescribed ;
- (g) that, if she is to carry more than one hundred pilgrims, she has on board the medical officer, or medical officers, required by section 27 and the prescribed attendants ;
- (h) such other particulars (if any) as may be prescribed.

Grant of certificates. **13.** The person by whom certificate A and certificate B are to be granted shall be the officer appointed under section 8.

Substitute for certificate A. **14.** Where the master of a pilgrim ship produces to that officer either of the following certificates, namely,—

- (a) a valid certificate granted by the Board of Trade or by a British Colonial Government, or
- (b) a certificate granted under the authority of a British Indian Government on a date not more than one year before the proposed day of sailing and in force and applicable to the voyage on which the ship is to proceed or the service on which she is about to be employed,

the officer may, if the particulars required by section 11 are certified thereby, take the certificate as evidence of those particulars, and it shall then be deemed to be a certificate A for the purpose of this Act.

15. (1) After receiving the notice required by section 8, the officer appointed under that section may, if he thinks fit, cause the ship to be surveyed at the expense of the master or owner by competent surveyors, who shall report to him whether she is, in their opinion, seaworthy and properly equipped, fitted and ventilated for the conveyance of pilgrims :

Provided that he shall not cause a pilgrim ship holding a certificate mentioned in section 14, clause (a) or clause (b), to be surveyed unless, by reason of her having met with damage or having undergone alterations, or on any other reasonable ground, he considers it likely that she may be found unseaworthy or not properly equipped, fitted or ventilated for the conveyance of pilgrims.

(2) If the officer causes a survey to be made of a pilgrim ship holding any such certificate, and the surveyors report that she is seaworthy and properly equipped, fitted and ventilated for the conveyance of pilgrims, and that there was no reasonable ground why the officer should have thought it likely that she would be found unseaworthy, or not properly equipped, fitted or ventilated for such traffic, the expense of the survey shall be paid by the Local Government.

16. (1) The officer authorized to grant a certificate under this Act in respect of a pilgrim ship shall not grant it unless he is satisfied that she has on board no cargo likely from its quality, quantity or mode of stowage to prejudice the health or safety of the pilgrims embarked.

(2) But save as aforesaid, and subject to the provisions of subsection (3), it shall be in the discretion of the officer to grant or withhold a certificate under this Act.

(3) In the exercise of that discretion such officer shall be subject to the control of the Local Government and of any intermediate authority which that Government may appoint in this behalf.

17. The master or owner of every pilgrim ship shall post up in a conspicuous part of her, so as to be visible to persons on board, a copy of each of the certificates granted under this Act in respect thereof, and shall keep those copies so posted up throughout the voyage.

18. If an officer appointed in this behalf by the Local Government is satisfied that a pilgrim has brought on board a pilgrim ship for his own use food of the prescribed quality and in the prescribed quantity, the requirements of this Act respecting the supply of food for pilgrims shall not apply so far as regards the supply of food for that pilgrim.

19. (1) The Governor General in Council may by order prescribe the number of superficial and cubic feet of space (not being less than the space for the time being required for passengers under any Act for the regulation of passenger ships) to be available in the between-decks for pilgrims of each class respectively on board pilgrim ships.

(2) Every pilgrim ship shall have reserved for the use of the pilgrims on board gratuitously by day and by night so much of the upper-deck as is not required for the airing space of the crew or for permanent structures :

Provided that the upper-deck space available for pilgrims shall in no case be less than six superficial feet for each pilgrim of the age of twelve years or upwards on board.

(3) Subject as aforesaid and to any rules which may be made under this Act, such space may be allotted among the different classes of pilgrims in such proportion as may be thought fit :

Provided that not less space shall be allotted to any one class than will provide six superficial feet of space available for each pilgrim of the age of twelve years or upwards of that class on board.

Disposal of pilgrims' baggage. 20. The baggage of all pilgrims shall be disposed of on board in such manner as may be prescribed.

Hospital accommodation. 21. There shall be a regularly appointed hospital on board every pilgrim ship offering such conditions of security, health and space and capable of accommodating such number, not exceeding five per cent., of the pilgrims embarked, as may be prescribed.

Statement concerning pilgrims to be delivered before ship departs. 22. The master of every pilgrim ship departing or proceeding from any port or place in British India shall sign a statement in duplicate in the prescribed form specifying the total number and the number of each sex of all the pilgrims embarked and the number of the crew, and such other particulars as may be prescribed, and shall deliver both copies to the officer appointed under section 8, who shall thereupon, after having first satisfied himself that the entries are correct, countersign and return to the master one of the copies.

Deaths on voyage. 23. The master of every pilgrim ship shall note in writing on the copy of the statement returned to him under the last foregoing section, and on any additional statement to be made under the next following section, the date and supposed cause of death of any pilgrim who may die on the voyage, and shall when the pilgrim ship arrives at her port or place of destination or at any port or place at which it may be intended to land pilgrims, and, before any pilgrims disembark, produce the statement, with any additions thereto made, to a person lawfully exercising consular authority on behalf of Her Majesty at the port or place or to the Chief Customs-officer thereat or the officer (if any) appointed there under section 8.

Pilgrim ship taking additional pilgrims at intermediate place. 24. (1) In either of the following cases, namely,—

- (a) if after a pilgrim ship has departed or proceeded on her voyage any additional pilgrims are taken on board at a port or place within British India appointed under this Act for the embarkation of pilgrims, or

- (b) if a pilgrim ship upon her voyage touches or arrives at any such port or place, having previously received on board additional pilgrims at any place beyond British India,

the master shall obtain a fresh certificate to the effect of certificate B from the officer appointed at that port or place under section 8, and shall furnish an additional statement in duplicate in the prescribed form respecting such additional pilgrims.

(2) All the foregoing provisions of this Act with respect to certificate B and the statement concerning pilgrims to be signed and delivered by the masters of pilgrim ships shall be applicable to any certificate granted or statement furnished under this section.

25. The master of every pilgrim ship arriving at any port or place in British India at which it may be intended to discharge pilgrims shall, before any pilgrims disembark, deliver a statement signed by him, specifying the total number and the number of each sex of all the pilgrims on board and the number of the crew, and such other particulars as may be prescribed, to the officer appointed thereat under section 8.

Statement concerning pilgrims to be delivered before pilgrims disembark in British India.

Pilgrim ships to be propelled principally by steam and to be of certain tonnage and steam-power.

26. Every pilgrim ship shall be propelled principally by steam, and shall be of the tonnage and steam-power (if any) prescribed.

27. Every pilgrim ship carrying more than one hundred pilgrims shall have on board a medical officer licensed as prescribed and, if the number carried exceed one thousand, a second medical officer similarly licensed, and also in all cases such attendants as may be prescribed.

Certain pilgrim ships to carry medical officers and attendants.

Medical officers' diaries and reports.

28. The medical officer or officers of every pilgrim ship shall keep such diaries and shall submit such reports or other returns as may be prescribed.

29. Every pilgrim ship proceeding from any port in British India other than Aden to any port in the Red Sea shall touch at Aden, and shall not leave that port without having obtained from the proper authority a certificate stating whether any case of cholera has or has not occurred on board since the ship left the port of last departure.

Pilgrim ships to touch at Aden on the outward voyage.

30. The authority at Aden empowered to grant the certificate required under section 29 may refuse to permit the ship to leave that port if the provisions of this Act or any rule thereunder are not complied with on board such ship.

When authority at Aden may refuse to let ship leave.

31. In the case of every pilgrim ship proceeding from any port in British India to any port in the Red Sea, the officer whose duty it is to grant a port-clearance shall not grant the clearance unless or until the master, owner or agent and two sureties resident in British India

Bond where pilgrim ship proceeds on outward voyage.

have executed in favour of the Secretary of State for India in Council a joint and several bond, for the sum of five thousand rupees, conditioned—

(a) that the ship (if the voyage do not commence at Aden) shall touch at Aden on the outward voyage and there obtain the certificate required by section 29, and

(b) that the master and medical officer or officers (if any) shall comply with the provisions of this Act and the rules thereunder.

32. (1) No pilgrim shall be received on board any pilgrim ship at any port or place in British India unless and until he has been medically inspected, at such time and place, and in such manner, as the Local Government may fix in this behalf, nor until the officer to whom notice has been given under section 6 has given permission for the embarkation of pilgrims to commence.

Medical inspection
and permission
required before
embarkation of
pilgrims.

(2) If, in the opinion of the officer making an inspection under this section, any pilgrim is suffering from cholera or choleraic indisposition, or any dangerously infectious or contagious disease, or shows any signs of the same or any other suspicious symptoms, such pilgrim shall not be permitted to embark.

(3) All articles which have been contaminated by persons suffering from cholera or choleraic indisposition, or any dangerously infectious or contagious disease, or are suspected of having been so contaminated, shall, before being taken on board a pilgrim ship, be disinfected, under the supervision of a medical officer appointed by the Local Government for the purpose, in such manner as may be prescribed.

33. (1) If in any case a pilgrim ship does not proceed on her voyage

Medical inspection
after embarkation in
certain cases.

within forty-eight hours after all the pilgrims have been received on board, and there is reason to suspect that any person on board is suffering from cholera or choleraic indisposition or any dangerously infectious or contagious disease, a medical inspection of all persons on board may be held in such manner as the Local Government may direct.

(2) If on such inspection any person is found to be suffering from cholera or choleraic indisposition or any dangerously infectious or contagious disease, or shows any signs of the same or any other suspicious symptoms, he shall, together with all articles belonging to him, be at once removed from the ship.

34. So far as may be practicable, and subject to

Medical inspection
of women.

any rules which may be made under this Act, the medical inspection of female pilgrims shall be carried out by women.

35. (1) Every pilgrim shall be entitled on payment of his passage-money and fulfilment of the other prescribed conditions (if any) to receive a ticket in the prescribed form, and shall be bound to produce the same to such officers and on such occasions as may be prescribed, and otherwise to deal with the same in the prescribed manner.

Issue and produc-
tion of tickets and
refund of passage-
money.

(2) Every pilgrim prevented from embarking under section 32 or removed from the ship under section 33 or otherwise prevented from

proceeding shall be entitled to the refund of any passage-money he may have paid, subject to any conditions or deductions which may be prescribed.

36. The master of every pilgrim ship shall be bound to pay the whole amount of the sanitary taxes imposed by lawful authority at the ports visited if and so far as such taxes are included in the costs of the tickets issued to the pilgrims.

Sanitary taxes payable by master of pilgrim ship.

Penalties.

37. (1) If a pilgrim ship departs or proceeds on a voyage from, or discharges passengers at, any port or place within British India in contravention of the provisions of section 7, sub-section (1), or section 10, the master or owner shall for every passenger carried in the ship, or so discharged (as the case may be), be punished with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to one month, or with both.

Penalty on master or owner for pilgrim ship unlawfully departing or receiving pilgrims on board.

(2) If any person is received as a pilgrim on board a pilgrim ship in contravention of the provisions of section 7, sub-section (2), the master or owner shall for every such pilgrim be liable to such punishment as is specified in sub-section (1).

(3) In either of the said cases the ship, if found within two years in any port or place within British India, may be seized and detained by a Chief Customs-officer until the penalties incurred under this Act by her master or owner have been adjudicated, and the payment of the fines imposed on him under this Act, with all costs, has been enforced, under the provisions of this Act:

Provided that the aggregate term of imprisonment awarded under this section shall not exceed one year.

38. If any one impedes or refuses to allow any entry or inspection authorized by or under this Act, he shall be punished with fine which may extend to five hundred rupees for each offence, or with imprisonment for a term which may extend to three months, or with both.

39. If the master or owner of a pilgrim ship without reasonable excuse, the burden of proving which shall lie upon him, fails to comply with the requirements of section 17 with respect to the posting of copies of certificates, he shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to one month, or with both.

Penalty on master or owner for not exhibiting copy of certificates.

40. If the master of a pilgrim ship fails to comply with any of the requirements of section 22, section 23 or section 25 as to the statements concerning pilgrims, or wilfully makes any false entry or note in or on any such statement, or fails to obtain any such fresh certificate or to make any such statement of the number of additional pilgrims as is mentioned in section 24, he shall be punished with fine which may extend to five

Penalty on master for not complying with requirements as to statements concerning pilgrims and certain other matters.

hundred rupees for every such offence, or with imprisonment for a term which may extend to three months, or with both.

41. If the master of a pilgrim ship, after having obtained any of the certificates mentioned in section 10 or section 24, fraudulently does or suffers to be done anything whereby the certificate becomes inapplicable to the altered state of the ship, the pilgrims on board or other matters to which the certificate relates, he shall be punished with fine which may extend to two thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

Penalty on master for fraudulent alteration in pilgrim ship after certificate obtained.

42. If the master of a pilgrim ship without reasonable excuse, the burden of proving which shall lie upon him, omits to supply to any pilgrim the prescribed allowance of food, fuel and water, he shall be punished with fine which may extend to twenty rupees for every pilgrim who has sustained detriment by the omission.

Penalty on master for failing to supply pilgrims with prescribed provisions.

43. (1) If a pilgrim ship has on board a number of pilgrims greater either than the number allowed under this Act or than the number allowed by the license or certificate (if any) granted at her port or place of departure, whichever shall be the smaller, the master and owner shall, for every pilgrim in excess of that number, be each punished with fine which may extend to twenty rupees, and the master shall further be liable to imprisonment for a term which may extend to one week in respect of each such pilgrim: Provided that the aggregate term of imprisonment awarded under this section shall not exceed six months.

Penalty on master and owner for carrying pilgrims in excess of authorized number.

(2) Any officer authorized in this behalf by the Local Government may cause all pilgrims over and above the number allowed under this Act or by such license or certificate as aforesaid to disembark, and may forward them to any port at which they may have contracted to land, and recover the cost of so forwarding them from the master or owner of the ship as if the cost were a fine imposed under this Act, and a certificate under the hand of that officer shall be conclusive proof of the amount of the cost aforesaid.

44. If the master of a pilgrim ship lands any pilgrim at any port or place other than the port or place at which such pilgrim may have contracted to land unless with his previous consent or unless the landing is made necessary by perils of the sea or other unavoidable accident, he shall for every such offence be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to one month, or with both.

Penalty on master for landing pilgrim at a place other than that at which he has contracted to land.

45. If a pilgrim ship, otherwise than by reason of perils of the sea or other unavoidable accident, touches at any port or place in contravention of any express or implied contract or engagement with the pilgrims with respect to the voyage which the ship was to make and the time which that voyage was to occupy, whether the contract or engagement was made by public advertisement or otherwise, the master and owner shall each be

Penalty on master and owner for making voyage in contravention of contract with pilgrims.

punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

Penalty on master and owner of pilgrim ship not propelled principally by steam or of prescribed tonnage or steam-power.

46. If a pilgrim ship is not propelled principally by steam or is not of the prescribed tonnage or steam-power as required by section 26, the master and owner shall each be punished with fine which may extend to five hundred rupees, or with imprisonment which may extend to three months, or with both.

Penalty on master of pilgrim ship sailing without medical officer or officers or attendants in contravention of section 27.

47. If a pilgrim ship carrying more than one hundred pilgrims has not on board a medical officer, or two medical officers if the number of pilgrims carried exceed one thousand, and also the prescribed attendants as required by section 27, the master shall be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

48. If the master of a pilgrim ship proceeding from any port in British India other than Aden to any port in the Red Sea, without reasonable excuse, the burden of proving which shall lie upon him, fails to touch at Aden, or leaves that port without having obtained the certificate required by section 29, he shall for every such offence be punished with fine which may extend to two thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

Penalty on master for not obtaining certificate at Aden on outward voyage.

49. If the master of a pilgrim ship knowingly receives on board any pilgrim or any contaminated article in contravention of the provisions of section 32, or keeps on board any pilgrim or article ordered to be removed under section 32, he shall be punished with fine which may extend to five hundred rupees for each pilgrim or fifty rupees for each article so received or kept on board, or with imprisonment which may extend to three months, or with both.

Penalty on master receiving or keeping on board pilgrim or article in contravention of section 32 or 33.

50. If the master or the medical officer (if any) of a pilgrim ship, without reasonable excuse, the burden of proving which shall lie upon him, breaks, or omits or neglects to obey, any rule under this Act, he shall be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

Penalty on master or medical officer of pilgrim ship disobeying rules under this Act.

Procedure.

Adjudication of offences and levy of fine by distress of pilgrim ship.

51. (1) Offences against this Act shall be punishable by a Magistrate.

(2) If the person on whom a fine is imposed under this Act is the master or owner of a pilgrim ship, and the fine is not paid at the time and in the manner prescribed by the order of payment, the Magistrate may, in addition to the ordinary means prescribed by law for enforcing

payment by warrant, direct the amount remaining unpaid to be levied by distress and sale of such pilgrim ship, her tackle, furniture and apparel.

52. For the purpose of the adjudication of penalties under this Act, every offence against its provisions shall be deemed to have been committed within the limits of the jurisdiction of the Magistrate of the place where the offender is found.

53. The penalties to which masters and owners of pilgrim ships are made liable by this Act shall be enforced only on information laid at the instance of officers appointed to grant certificates under this Act, or, at any port or place where there is no such officer, at the instance of the Chief Customs-officer.

54. A Magistrate imposing a fine under this Act may, if he thinks fit, direct the whole or any part thereof to be applied in or towards compensating any person for any detriment which he may have sustained by the act or default in respect of which the fine is imposed, or in or towards payment of the expenses of the prosecution, or in rewarding any person upon whose information the conviction took place or who has been otherwise instrumental in the detection or prosecution of the offender.

55. (1) Whenever in the course of any legal proceeding under this Act the testimony of a witness is required in relation to the subject-matter of the proceeding, any deposition which he may have previously made in relation to the same subject-matter before any Justice or Magistrate in Her Majesty's dominions (including all parts of India other than those subject to the same Local Government as the port or place where the proceeding is instituted), or before any British consular officer elsewhere, shall be admissible in evidence on proof that the witness cannot be found within the jurisdiction of the Court in which the proceeding is instituted :

Provided that the deposition shall not be admissible unless—

- (a) it is authenticated by the signature of the Justice, Magistrate or consular officer;
- (b) it was made in the presence of the person accused ; and
- (c) the fact that it was so made is certified by the Justice, Magistrate or consular officer.

(2) It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition ; and in any criminal proceeding such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified.

Supplemental.

56. (1) The Chief Customs-officer or other officer (if any) appointed by the Local Government in this behalf at any port or place within British India at which a pilgrim ship touches or arrives shall, with advertence to the provisions of this Act, send any particulars which he may deem important respecting such pilgrim ship and

the pilgrims carried therein to the officer at the port or place from which she commenced her voyage, and to the officer at any other port or place within British India where the pilgrims or any of them embarked or are to be discharged.

(2) The Chief Customs-officer or other officer (if any) appointed by the Local Government in this behalf at any port or place in British India at which a pilgrim ship touches or arrives may enter on the ship and inspect her in order to ascertain whether the provisions of this Act as to the number of pilgrims and other matters have been complied with.

57. In any proceeding for the adjudication of any penalty incurred under this Act any document purporting to be a report of such particulars as are referred to in sub-section (1) of the last foregoing section, or a copy of the proceedings of any Court of Justice duly authenticated, and also any like document purporting to be made and signed by any person lawfully exercising consular authority on behalf of Her Majesty in any foreign port, shall be received in evidence, if it appears to have been officially transmitted to any officer at or near the place where the proceeding under this Act is had.

Power for Governor General in Council and Local Government to make rules.

58. (1) The Governor General in Council may make rules consistent with this Act to regulate all or any of the following matters:—

- (a) the boats, anchors and cables to be provided on board pilgrim ships ;
- (b) the instruments for purposes of navigation to be supplied :
- (c) the apparatus for the purpose of extinguishing fires on board and the precautions to be taken to prevent and deal with such fires ;
- (d) the provision of appliances for saving life and of means for making signals of distress, and the supply of lights inextinguishable in water and fitted for attachment to life-buoys ;
- (e) the fittings and other appliances to be provided in the upper and between decks for the comfort and convenience of pilgrims ;
- (f) the scale on which and manner in which food, fuel and water are to be supplied to pilgrims, and the quality of such food, fuel and water :
- (g) the quality, quantity and storage of the cargo to be carried :
- (h) the allotment of the upper-deck space between the various classes of pilgrims ;
- (i) the amount and distribution of the baggage of pilgrims ;
- (j) the nature and the extent of the hospital accommodation and the medical stores, disinfectants, and other appliances and fittings to be provided on board for maintaining health, cleanliness and decency ;
- (k) the form of the statements to be furnished by the master under sections 22 and 25 and the particulars to be entered therein ;

- (l) the tonnage and steam-power to be required in the case of pilgrim ships, and the voyages to which and seasons at which such rules shall respectively apply ;
- (m) the licensing and appointment of medical officers and other attendants in cases where they are required by this Act to be carried, and the diaries, reports and other returns to be kept or submitted by such medical officers ;
- (n) the manner in which contaminated articles shall be disinfected before being taken on board a pilgrim ship ;
- (o) the manner in which and the persons by whom the medical inspection of women shall be carried out ;
- (p) the supply of tickets to intending pilgrims, the form of such tickets and the conditions and other matters to be specified thereon, and the amount of the sanitary taxes to be included in the cost thereof ;
- (q) the refund of passage-money to intending pilgrims who may not be permitted to embark or who having embarked may be removed from the ship under the powers conferred by sections 32 and 33 or who may otherwise for any unavoidable cause be prevented from proceeding in any pilgrim ship ;
- (r) the functions of the master, medical officer or officers (if any) and other officers during the voyage; and,
- (s) generally, to carry out the purposes of this Act.

(2) The Local Government may, [1] * * * make rules consistent with this Act to regulate—

- (a) the local limits within which, and the time and mode at and in which, pilgrims shall be embarked or discharged at any port or place appointed under this Act in that behalf ; and
- (b) the time within which a pilgrim ship shall depart or proceed on her voyage after commencing to take pilgrims on board.

(3) In making a rule under this section the authority making it may direct that a breach of it shall be punishable with fine which may extend to two hundred rupees, and when the breach is a continuing breach with a further fine which may extend to twenty rupees for every day after the first during which the breach continues.

(4) The power to make rules under this section is subject to the condition of the rules being made after previous publication.

59. All rules heretofore made under the Native Passenger Ships Act, 1887, shall, so far as consistent X of 1887 with this Act, continue to be applicable to pilgrim ships unless and until they shall be superseded or altered by rules under this Act.

60. The Local Government shall appoint such persons as it may think fit to exercise and perform the powers and duties which are conferred and imposed by this Act or may be conferred and imposed thereunder.

Leg. Changes:—[1] The words " with the previous sanction of the Governor General in Council, " were omitted by Act IV of 1914.

THE POISONS ACT, 1919.

(ACT XII OF 1919.)

[Passed on the 3rd September, 1919.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1904	I	Poisons	...
1919	XII	Poisons	Rep., Act XII of 1919.

An Act to consolidate and amend the law regulating the importation, possession and sale of poisons throughout British India.

WHEREAS it is expedient to consolidate and amend the law regulating the importation, possession and sale of poisons throughout British India; It is hereby enacted as follows :—

Short title and extent. 1. (1) This Act may be called the Poisons Act, 1919;

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

Power of the Local Government to regulate possession for sale and sale of any poison. 2. (1) Subject to the control of the Governor General in Council, the Local Government may by rule (a) regulate within the whole or any part of the territories under its administration the possession for sale and the sale, whether wholesale or retail, of any specified poison.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the grant of licenses to possess any specified poison for sale, wholesale or retail, and the fixing of the fee (if any) to be charged for such licenses;
- (b) the classes of persons to whom alone such licenses may be granted;
- (c) the classes of persons to whom alone any such poison may be sold;
- (d) the maximum quantity of any such poison which may be sold to any one person;
- (e) the maintenance by vendors of any such poison of registers of sales, the particulars to be entered in such registers, and the inspection of the same;
- (f) the safe custody of such poisons and the labelling of the vessels, packages or coverings in which any such poison is sold or possessed for sale; and
- (g) the inspection and examination of any such poison when possessed for sale by any such vendor.

Case-law :—(a) Rules by Burma Government only apply to retail sales and apparently wholesale sales remain uncontrolled, 16 Cr. L.J. 764=31 Ind. Cas. 364=8 Bur. L.J. 244.

Power to prohibit importation into British India of any poison except under license.

3. The Governor General in Council may, by notification in the Gazette of India, prohibit except under and in accordance with the conditions of a license, the importation into British India of any specified poison, and may by rule regulate the grant of licenses.

Power to regulate possession of any poison in certain areas.

4. (1) The Local Government, with the previous sanction of the Governor General in Council, may by rule regulate the possession of any specified poison in any local area in which the use of such poison for the purpose of committing murder or mischief by poisoning cattle appears to it to be of such frequent occurrence as to render restrictions on the possession thereof desirable.

(2) In making any rule under sub-section (1), the Local Government may direct that any breach thereof shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both, together with confiscation of the poison in respect of which the breach has been committed, and of the vessels, packages or coverings in which the same is found.

Presumption as to specified poisons.

5. Any substance specified as a poison in a rule made or notification issued under this Act shall be deemed to be a poison for the purposes of this Act.

Penalty for unlawful importation, etc.

6. (1) Whoever,—

- (a) commits a breach of any rule made under section 2, or
- (b) imports into British India without a license any poison the importation of which is for the time being restricted under section 3, or
- (c) breaks any condition of a license for the importation of any poison granted to him under section 3,

shall be punishable—

- (i) on a first conviction, with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both, and
- (ii) on a second or subsequent conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Any poison in respect of which an offence has been committed under this section, together with the vessels, packages or coverings in which the same is found, shall be liable to confiscation.

7. (1) The District Magistrate, the Sub-divisional Magistrate and, in a Presidency-town, the Commissioner of Police, may issue a warrant for the search of any place in which he has reason to believe or to suspect that any poison is possessed or sold in contravention of this Act or any rule thereunder, or that any poison liable to confiscation under this Act is kept or concealed.

V of 1898.

(2) The person to whom the warrant is directed may enter and search the place in accordance therewith, and the provisions of the Code of Criminal Procedure, 1898, relating to search-warrants shall, as far as may be, be deemed to apply to the execution of the warrant.

8. (1) In addition to any other power to make rules hereinbefore conferred, the Governor General in Council, or, subject to the control of the Governor General in Council, the Local Government, may make rules generally to carry out the purposes and objects of this Act.

(2) Every power to make rules conferred by this Act shall be subject to the condition of the rule being made after previous publication.

(3) All rules made by the Governor General in Council or by the Local Government under this Act shall be published in the Gazette of India or the local official Gazette, as the case may be, and on such publication shall have effect as if enacted in this Act.

9. (1) Nothing in this Act or in any license granted or rule made thereunder shall extend to, or interfere with, anything done in good faith in the exercise of his profession as such by a medical or veterinary practitioner^(a).

(2) Notwithstanding anything hereinbefore contained, the Local Government may in its discretion, by general or special order, declare that all or any of the provisions of this Act shall be deemed not to apply to any article, or class of articles of commerce specified in such order or to any poison or class of poisons used for any purpose so specified.

(3) The authority on which any power to make rules under this Act is conferred may, by general or special order, either wholly or partially—

(a) exempt from the operation of any such rules, or

(b) exclude from the scope of the exemption provided by subsection (1),

any person or class of persons either generally or in respect of any poisons specified in the order.

Repeal of Act I of 1904.

10. The Poisons Act, 1904, is hereby repealed.

THE POLICE ACT, 1861.

(ACT V OF 1861.)

[Passed on the 22nd March, 1861.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1861	V	Police	<p>Rep. in pt., Act IX of 1871. „ Act XVI of 1874 „ Act X of 1882. Rep. in pt. (in Bengal)— Beng. Act VII of 1869. Rep. in pt. (in Rangoon)— Bur. Act IV of 1899, S. 2, when notified (and see Ss. 3, 4). Amended, Act III of 1888. „ Act VIII of 1895. „ Act I of 1903. Locally, Reg. VII of 1901. Supplemented, Ben. Act VII of 1869. Portions extended to Calcutta and Suburbs with modifications, Ben. Act I of 1898. Declared in force in— the Santhal Parganas, Reg. III of 1872, S. 3, as amended by Reg. III of 1899, S. 3; the Arakan Hill District, except S. 11, Reg. IX of 1874, S. 3. Upper Burma generally (except the Shan States), Act XIII of 1898, S. 4; British Baluchistan, Reg. I of 1890, S. 3; The Angul District, Reg. I of 1894, S. 3; The Chittagong Hill Tracts, Reg. I of 1900, S. 4.</p>

An Act for the Regulation of Police.

WHEREAS it is expedient to re-organize the police and to make it a more efficient instrument for the prevention and detection of crime; It is enacted as follows:—

Preamble.

- The following words and expressions in this Act shall have the meaning assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say,—

Interpretation-
clause.

the words “Magistrate of the district” shall mean the chief officer charged with the executive administration of a district and exercising the powers of a Magistrate, by whatever designation the chief officer charged with such executive administration is styled:

the word "Magistrate" (a) shall include all persons within the general police-district, exercising all or any of the powers of a Magistrate : the word "police" shall include all persons who shall be enrolled under this Act :

the words "general police-district" shall embrace any presidency, province or place, or any part of any presidency, province or place, in which this Act shall be ordered to take effect :

the words "District Superintendent" and "District Superintendent of Police" shall include any Assistant District Superintendent or other person appointed by general or special order of the Local Government to perform all or any of the duties of a District Superintendent of Police under this Act in any District :

the word "property" shall include any moveable property, money or valuable security :

[1] * * * *

the word "person" shall include a company or corporation :

the word "month" shall mean a calendar month :

the word "cattle" shall, besides horned cattle, include elephants, camels, horses, asses, mules, sheep, goats and swine.

[2] 2. The entire police-establishment under a Local Government shall, for the purposes of this Act, be deemed to be one police-force, and shall be formally enrolled ; and shall consist of such number of officers and men, and shall be constituted in such manner, and the members of such force shall receive such pay, as shall from time to time be ordered by the Local Government, subject to the [3]control of the Governor General of India in Council.

3. The superintendence of the police throughout a general police-district shall vest in and, subject to the general control of the Governor General of India in Council, shall be exercised by the Local Government to which such district is subordinate ; and, except as authorised under the provisions of this Act, no person, officer or Court shall be empowered by the Local Government to appoint, supersede or control any police functionary.

4. The administration of the police throughout a general police-district shall be vested in an officer to be styled the Inspector-General of Police (b), and in such Deputy Inspectors-General and Assistant Inspectors-General as to the Local Government shall seem fit.

The administration of the police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such Magistrate (c), be vested in a District Superintendent

Leg. Changes :—[1] Repealed by Act X of 1914. [2] S. 2, so far as it relates to the provinces under the administration of the Lieutenant-Governor of Bengal, was repealed by the Bengal Police Act, 1869 (VII of 1869). [3] Substituted by Act IV of 1914.

Case-law :—(a) Meaning, 4 W.R. 2 (Cr.). (b) Complaint to the Inspector-General of Police, 9 P.W.R. 1908, Cr.=7 Cr. L.J. 291. (c) Sanction to prosecute—Subordination of Police to Magistrates, S. 195, Cr. P.C., A.W.N. (1890) 167 ; A.W.N. (1895) 152 ; 6 O.C. 1 (8) ; 1 L.B.R. 101 (104) ; A.W.N. (1904) 231=1 A.L.J. 597=27 A. 292 ; 32 C. 180 ; *contra* 27 U. 452 ; see herein 6 P.R. 1910, Cr.=10 P.W.R. 1910, Cr.=5 Ind. Cas. 839.

and such Assistant District Superintendents as the Local Government shall consider necessary.

The Inspector-General and other officers abovementioned shall from time to time be appointed by the Local Government, and may be removed by the same authority.

Powers of Inspector-General. Exercise of powers. 5. The Inspector-General of Police shall have the full powers of a Magistrate throughout the general police-district; but shall exercise those powers subject to such limitation as may from time to time be imposed by the Local Government.

6. [*Magisterial powers of police-officers.*] *Rep. by the Code of Criminal Procedure, 1882 (Act X of 1882).*

Appointment, dismissal, etc., of inferior officers. 7. The appointment of all police-officers (a) other than those mentioned in section 4 of this Act shall, under such rules as the Local Government shall from time to time sanction, rest with the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General and District Superintendents of Police, who may, under such rules as aforesaid, at any time dismiss, suspend or reduce any police-officer whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same;

or may award any one or more of the following punishments to any police-officer who shall discharge his duty in a careless or negligent manner, or who, by any act of his own, shall render himself unfit for the discharge thereof, namely:—

- (a) fine to any amount not exceeding one month's pay;
- (b) confinement to quarters for a term not exceeding fifteen days, with or without punishment drill, extra guard, fatigue or other duty (b);
- (c) deprivation of good-conduct pay;
- (d) removal from any office of distinction or special emolument.

Certificates to police-officers. 8. Every police-officer so appointed shall receive on his appointment a certificate (c) in the form annexed to this Act, under the seal of the Inspector-General or such other officer as the Inspector-General shall appoint, by virtue of which the person holding such certificate shall be vested with the powers, functions and privileges of a police-officer.

Surrender of certificate. Such certificate shall cease to have effect whenever the person named in it ceases for any reason to be a police-officer, and, on his ceasing to be such an officer, shall be forthwith surrendered by him to any officer empowered to receive the same.

Case-law:—(a) This section alone dealing with the appointment, 10 C.W.N. 727; scope of appointment, 10 C.W.N. 727=3 C.L.J. 475=3 Cr. L. J. 420; the appointment of police officers with limited powers, 10 C.W.N. 727=3 C.L.J. 475=3 Cr. L. J. 420; police officer maliciously making a defamatory report against a person to his superior, 4 P.W.R. 1910, Cr.; Police Constable punished departmentally for taking bribe whether can be punished under S. 163, Penal Code, 26 P.R. 1915, Cr.=16 Cr. L.J. 788=31 Ind. Cas. 644. (b) Confinement for an unlimited period illegal, 2 C.L.J. 616; no conviction for disobeying such an order, 2 C.L.J. 616, (c) Defect in certificate of appointment, 10 C.W.N. 727.

A police-officer shall not by reason of being suspended (a) from office cease to be a police-officer. During the term of such suspension the powers, functions and privileges vested in him as a police-officer shall be in abeyance, but he shall continue subject to the same responsibilities, discipline and penalties and to the same authorities, as if he had not been suspended.

9. No police-officer shall be at liberty to withdraw himself from the duties of his office, unless expressly allowed to do so by the District Superintendent or by some other officer authorised to grant such permission, or, without the leave of the District Superintendent, to resign his office, unless he shall have given to his superior officer notice in writing, for a period of not less than two months, of his intention to resign.

Police-officer not to resign without leave or two months' notice.

Police-officers not to engage in other employment.

10. No police-officer shall engage in any employment or office whatever other than his duties under this Act, unless expressly permitted to do so in writing by the Inspector-General.

11. [*Police superannuation fund.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

12. The Inspector-General of Police (b) may, from time to time, subject to the approval of the Local Government (c), frame such orders and rules as he shall deem expedient relative to the organization, classification and distribution of the police-force, the places at which the members of the force shall reside, and the particular services to be performed by them; their inspection, the description of arms, accoutrements and other necessities to be furnished to them; the collecting and communicating by them of intelligence and information, and all such other orders and rules relative to the police-force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties.

Power of Inspector-General to make rules.

13. It shall be lawful for the Inspector-General of Police, or any Deputy Inspector-General, or Assistant Inspector-General, or for the District Superintendent, subject to the general direction of the Magistrate of the district, on the application of any person showing the necessity thereof, to depute any additional number of police-officers (d) to keep the peace at any place within the general police-district, and for such time as shall be deemed proper. Such force shall be exclusively under the orders of the District Superintendent, and shall be at the charge of the person making the application:

Additional police-officers employed at cost of individuals.

Provided that it shall be lawful for the person on whose application such deputation shall have been made, on giving one month's notice in writing to the Inspector-General, Deputy Inspector-General, or

Case-law :—(a) Police-officer under suspension and his responsibilities, A.W.N. (1884) 169—10 A. 459; 17 W.R. 12, Cr.—8 B.L.R. App. 58. (b) Scope and power to make rules, 15 C. 194. (c) Approval of Local Government necessary, 15 C. 194. (d) Cost of additional police who to bear, 1 W.R. 15, Cr.; liability of third person to bear cost, 1 W.R. 15, Cr.

Assistant Inspector-General, or to the District Superintendent, to require that the police-officers so deputed shall be withdrawn; and such person shall be relieved from the charge of such additional force from the expiration of such notice.

15. Whenever any railway, canal or other public work, or any manufactory or commercial concern, shall be carried on, or be in operation in any part of the country, and it shall appear to the Inspector-General that the employment of an additional police-force in such place is rendered necessary by the behaviour or reasonable apprehension of the behaviour of the persons employed upon such work, manufactory or concern, it shall be lawful for the Inspector-General, with the consent of the Local Government, to depute such additional force to such place, and to employ the same so long as such necessity shall continue, and to make orders, from time to time, upon the person having the control or custody of the funds used in carrying on such work, manufactory or concern, for the payment of the extra force so rendered necessary, and such person shall thereupon cause payment to be made accordingly.

16. (1) It shall be lawful for the Local Government, by proclamation to be notified in the official Gazette, and in such other manner as the Local Government shall direct, to declare that any area subject to its authority has been found to be in a disturbed or dangerous state, or that, from the conduct of the inhabitants of such area, or of any class or section of them, it is expedient to increase the number of police.

(2) It shall thereupon be lawful for the Inspector-General of Police, or other officer authorized by the Local Government in this behalf, with the sanction of the Local Government, to employ any police-force in addition to the ordinary fixed complement to be quartered in the area specified in such proclamation as aforesaid.

(3) Subject to the provisions of sub-section (5) of this section, the cost (a) of such additional police-force shall be borne by the inhabitants of such area described in the proclamation.

(4) The Magistrate of the district, after such enquiry as he may deem necessary, shall apportion such cost among the inhabitants who are, as aforesaid, liable to bear the same and who shall not have been exempted under the next succeeding sub-section. Such apportionment shall be made according to the Magistrate's judgment of the respective means within such area of such inhabitants.

(5) It shall be lawful for the Local Government by order, to exempt any persons or class or section of such inhabitants from liability to bear any portion of such cost.

(6) Every proclamation issued under sub-section (1) of this section shall state the period for which it is to remain in force, but it may be withdrawn at any time or continued from time to time for a further period or periods as the Local Government may in each case think fit to direct.

Case-law :—(a) Who to bear the cost, 1 W.R. 16, Cr.

Explanation.—For the purposes of this section, "inhabitants" shall include persons who themselves or by their agents or servants occupy or hold land or other immoveable property within such area, and landlords who themselves or by their agents or servants collect rents direct from raiyats or occupiers in such area, notwithstanding that they do not actually reside therein.

15-A. (1) If, in any area in regard to which any proclamation notified under the last preceding section is in force, death or grievous hurt or loss of, or damage to, property has been caused by or has ensued from the misconduct of the inhabitants of such area or any class or section of them, it shall be lawful for any person, being an inhabitant of such area, who claims to have suffered injury from such misconduct to make, within one month from the date of the injury or such shorter period as may be prescribed, an application for compensation to the Magistrate of the district or of the sub-division of a district within which such area is situated.

Awarding compensation to sufferers from misconduct of inhabitants or persons interested in land.

(2) It shall thereupon be lawful for the Magistrate of the district, with the sanction of the Local Government after such enquiry as he may deem necessary, and whether any additional police-force has or has not been quartered in such area under the last preceding section, to—

- (a) declare the persons to whom injury has been caused by or has ensued from such misconduct ;
- (b) fix the amount of compensation to be paid to such persons and the manner in which it is to be distributed among them ; and
- (c) assess the proportion in which the same shall be paid by the inhabitants of such area other than the applicant who shall not have been exempted from liability to pay under the next succeeding sub-section :

Provided that the Magistrate shall not make any declaration or assessment under this sub-section, unless he is of opinion that such injury as aforesaid has arisen from a riot or unlawful assembly within such area, and that the person who suffered the injury was himself free from blame in respect of the occurrences which led to such injury.

(3) It shall be lawful for the Local Government, by order, to exempt any persons or class or section of such inhabitants from liability to pay any portion of such compensation.

(4) Every declaration or assessment made or order passed by the Magistrate of the district under sub-section (2) shall be subject to revision by [1]the Commissioner of the Division or [1] the Local Government, but save as aforesaid shall be final.

(5) No civil suit shall be maintainable in respect of any injury for which compensation has been awarded under this section.

Leg. Changes :—[1] In the North-West Frontier Province these words should be omitted, *vide* the North-West Frontier Province Law and Justice Regulation, 1901 (VII of 1901), First Schedule.

(6) *Explanation*.—In this section the word "inhabitants" shall have the same meaning as in the last preceding section.

Recovery of moneys payable under sections 13, 14, 15 and 15-A, and disposal of same when recovered. 16. (1) All moneys payable under sections 13, 14, 15 and 15-A shall be recoverable by the Magistrate of the district in the manner provided by sections 386 and 387 of the Code of Criminal Procedure, 1882, X of 1882. for the recovery of fines, or by suit in any competent Court.

(2) All moneys paid or recovered under sections 13, 14 and 15 shall be credited to a fund to be called "The General Police Fund," and shall be applied to the maintenance of the police-force under such orders as the Local Government shall pass.

(3) All moneys paid or recovered under section 15-A shall be paid by the Magistrate of the district to the persons to whom and in the proportions in which the same are payable under that section.

Special police-officers. 17. (a) When it shall appear that any unlawful assembly, or riot or disturbance of the peace has taken place, or may be reasonably apprehended (b), and that the police-force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbance of the peace has occurred, or is apprehended (c), it shall be lawful for any police-officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such police-officer may require to act as special police-officers for such time and within such limits as he shall deem necessary; and the Magistrate to whom such application is made shall, unless he see cause to the contrary, comply with the application (d).

Powers of special police-officers. 18. (e) Every special police-officer so appointed shall have the same powers, privileges and protection, and shall be liable to perform the same duties and shall be amenable to the same penalties (f), and be subordinate to the same authorities, as the ordinary officers of police.

Case-law :—(a) Scope of section, 10 C.W.N. 322; 10 B.L.R. App. 4=18 W.R. 67, Cr. (b) When can special police-officers be appointed, 10 B.L.R. App. 4=18 W.R. 67, Cr.; 12 C.W.N. 366=7 Cr. L.J. 186=35 C. 454; 12 C.W.N. 727=8 C.L.J. 66=7 Cr. L.J. 507; circumstances justifying appointment of special constables absent, 12 C.W.N. 366=7 Cr. L.J. 186=35 C. 454; 12 C.W.N. 727=8 C.L.J. 66=7 Cr. L.J. 507; murder or apprehension of murder, no ground for appointment, 10 B.L.R. App. 4; procedure in cases not falling within the section, 18 W.R. 67, Cr.; disputes to proprietary rights—legality of appointing active men on one side as special constables, 10 C.W.N. 82=2 C.L.J. 555. (c) Object of appointing special constables, 10 C.W.N. 82=2 C.L.J. 555; 10 C.W.N. 322; 43 C. 277=20 C.W.N. 855=17 Cr. L.J. 197=34 Ind. Cas. 369; arrest of special constables, 10 C.W.N. 322. (d) Order under the section executive not judicial, 18 W.R. 67, Cr.=10 C.W.N. 322; 5 C.W.N. 322; High Court's interference with the order of Magistrate, 10 C.W.N. 322; where the order of Magistrate illegal, 10 B.L.R. App. 4; Magistrate's order appointing certain persons as special constables, whether an order made in Criminal proceedings, 20 O.O. 229. (e) Scope of section, 10 C.W.N. 322. (f) Effect of this section on S. 29, 10 C.W.N. 322.

19. (a) If any person being appointed a special police-officer as aforesaid shall, without sufficient excuse, neglect or refuse ^(b) to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable, upon conviction before a Magistrate, to a fine not exceeding fifty rupees for every such neglect, refusal or disobedience.

Refusal to serve as special police-officers.

Authority to be exercised by police-officers.

20. Police-officers enrolled under this Act shall not exercise any authority, except the authority provided for a police-officer under this Act and any Act which shall hereafter be passed for regulating criminal procedure.

21. Nothing in this Act shall affect any hereditary or other village-police-officer, unless such officer shall be enrolled as a police-officer under this Act. When so enrolled, such officer shall be bound by the provisions of the last preceding section. No hereditary or other village-police-officer shall be enrolled without his consent and the consent of those who have the right of nomination.

Village-police-officers.

If any police-officer appointed under Act XX of 1856 *(to make better provision for the appointment and maintenance of Police-chaukidars in Cities, Towns, Stations, Suburbs and Bazars in the Presidency of Fort William Bengal)* is employed out of the district for which he shall have been appointed under that Act, he shall not be paid out of the rates levied under the said Act for that district.

Police-chaukidars in the Presidency of Fort William

Police-officers always on duty and may be employed in any part of district.

22. Every police-officer shall, for all purposes in this Act contained, be considered to be always on duty, and may at any time be employed as a police-officer in any part of the general police-district.

23. (c) It shall be the duty of every police-officer promptly to obey and execute all orders ^(d) and warrants lawfully issued to him by any competent authority : to collect and communicate intelligence affecting the public peace ^(e) ; to prevent the commission of offences and public nuisances ; to detect and bring offenders to justice, and to apprehend all persons whom he is legally authorized to apprehend, and for whose apprehension sufficient ground exists ^(f) ; and it shall be lawful for every police-officer, for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking-shop, gaming-house or other place of resort of loose and disorderly characters.

Duties of police-officers.

Case-law :—(a) Scope of section, 10 C.W.N. 322. (b) Refusal on the ground that they are not suitable persons to be appointed, 10 C.W.N. 322 ; refusal to accompany to police-office to receive order of appointment is no refusal to serve, 28 C 411—5 C.W.N. 184 ; prosecution under S. 19 when illegal, 43 C. 277—20 C.W.N. 855—17 Cr. L.J. 197—34 Ind. Cas 369. (c) Section gives wider powers for preventing offences in general, 8 L.B.R. 829—17 Cr. L.J. 347—85 Ind. Cas. 578. (d) Orders to purchase rafters, etc., A.W.N. (1891) 179. (e) Omission to give information is punishable under S. 177, I.P.C., 21 W.R. 80, Cr.; false entry in the diary, 20 A. 151 ; 21 W.R. 80, Cr. (f) Duty to arrest when no sufficient grounds for apprehension, 26 W.R. 8, Cr.

24. It shall be lawful for any police-officer to lay any information before a Magistrate, and to apply for a summons, warrant, search-warrant or such other legal process as may by law issue against any person committing an offence [1] * * *

Police-officers may lay information, etc (a).

Police-officers to take charge of unclaimed property and be subject to Magistrate's orders as to disposal.

25. It shall be the duty of every police-officer to take charge of all unclaimed property^(b), and to furnish an inventory thereof to the Magistrate of the district.

The police-officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the district.

26. [1] The Magistrate of the district may detain the property and issue a proclamation, specifying the articles of which it consists, and requiring any person who has any claim thereto to appear and establish his right to the same within six months from the date of such proclamation.

Magistrate may detain property and issue proclamation (c).

[2] (2) The provisions of section 525 of the Code of Criminal Procedure, 1882, shall be applicable to property referred to in this section. X of 1882.

27. (1) If no person shall within the period allowed claim such property^(d) or the proceeds thereof, if sold, it may, if not already sold under sub-section (2) of the last preceding section, be sold under the orders of the Magistrate of the district.

Confiscation of property if no claimant appears.

(2) The sale-proceeds of property sold under the preceding sub-section and the proceeds of property sold under section 26 to which no claim has been established shall be at the disposal of Government.

28. Every person, having ceased to be an enrolled police-officer under this Act, who shall not forthwith deliver up his certificate, and the clothing, accoutrements, appointments and other necessaries which shall have been supplied to him for the execution of his duty, shall be liable, on conviction before a Magistrate, to a penalty not exceeding two hundred rupees, or to imprisonment with or without hard labour, for a period not exceeding six months, or to both.

Persons refusing to deliver up certificate, etc., on ceasing to be Police-officers.

Leg. Changes :—[1] Repealed by Act X of 1882. [2] This sub section was added by the Police Act (1861) Amendment Act, 1895 (VIII of 1895), S. 7.

Read now the Code of Criminal Procedure, 1898 (Act V of 1898). see the Code as modified up to the 1st April, 1903.

Case-law :—(a) Malicious report against a person to a superior officer of police, 4 P.W.R. 1910, Cr. = 5 Ind. Cas. 714 = 11 Cr. L.J. 205. (b) Timber washed on one's estate by a river, 9 W.R. 97, Cr. (c) Claim of creditor to attach right, title and interest of judgment debtor whether covered by section, 6 L.B.E. 57. (d) Right of the finder of goods, U.B.R. (1903), Vol. I, Police, p. 1.

(a) 29. Every police-officer^(b) who shall be guilty of any violation of duty^(c) or wilful breach or neglect of any rule or regulation or lawful order^(d) made by competent authority^(e), or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months, or who, being absent on leave^(f), shall fail, without reasonable cause, to report himself for duty on the expiration of such leave, or who shall engage without authority in any employment other than his police-duty, or who shall be guilty of cowardice, or who shall offer any unwarrantable personal violence to any person in his custody^(g) shall be liable, on conviction before a Magistrate^(h), to a penalty⁽ⁱ⁾ not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months^(j), or to both.

30. (1) The District Superintendent or Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads, or in the public streets or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass.

(2) He may also, on being satisfied that it is intended by any persons or class of persons to convene or collect an assembly in any such road,

Case-law :—(a) Scope of the section, 12 C. 427 ; section not applicable to special police-officers, 10 C.W.N. 322 ; refusal to do extra fatigue duty, 15 P.W.R. 1911 ; refusal to serve as special constables, no offence under the section, 10 C.W.N. 322 ; effect of S. 18 on this section, 10 C.W.N. 322 (332) ; difference between this section and S. 42, 7 N.W.P. H.C.R. 237 ; departmental punishment how far affects punishment by Courts, 9 Ind. Cas. 381=12 Cr. L.J. 143=15 P.W.R. 1911=184 P.L.R. 1911 ; offence falling both under this Act and Penal Code, 11 P.R. 1874, Cr. ; police-officer committing offence while not on duty, 96 P.R. 1866, Cr. ; who should prefer charge under the section, 2 P.R. 68, Cr. ; no sanction necessary for charges under the section, 2 P.R. 1868, Cr. ; S. 42 has no connection with this section, 7 N.W. P.H.C.R. 237 ; summary trial of offences under section, 25 W.R. 20, Cr. ; but see, 1 Agra H.C.R. 24 ; police-officer not a competent witness, 6 C.P.L.R. 1, Cr. ; police recruit to enlist his own name, Oudh S.C. 11, appeal, 5 W.R. 22, Cr. ; construction, 10 C.W.N. 322 ; 5 C.P.L.R. 92. (b) Section not applicable to persons who are not police-officers, 10 C.L.R. 521 ; 17 W.R. 12, Cr.=8 B.L.R. App. 58 ; 10 A. 459 ; head constable detaining accused more than 24 hours, 1 W.R. 5, Cr. ; police-officer under suspension, 10 A. 459 ; 17 W.R. 12, Cr. (c) Violation must be intentional, 19 W.R. 7, Cr. ; 17 W.R. 34, Cr.=8 B.L.R. App. 60 ; see also, A.W.N. (1883) 42 ; police officer negligently submitting an incorrect report, 15 W.R. 17, Cr. ; mere rashness or negligence before ordering search is no violation of duty, 19 W.R. 17, Cr. ; mere indiscretion and carelessness in the conduct of inquiries, A.W.N. (1883) 42 ; neglect to act on information while on other duty, 17 W.R. 34, Cr. ; police-officers authorised to depute need not proceed to the spot himself, 1 Agra H.C.R. 1, Cr. ; omission to attend extra drill, 12 C. 427 ; police-officer liable for damages for ordering search of a man's house without sufficient grounds, 19 W.R. 7, Cr. (d) Meaning, 12 C. 427 ; difference between a rule, a regulation and a lawful order, 15 C. 194. (e) Inspector-General of Police alone can make rules, 15 C. 194 ; power of District Superintendent of Police to make rules, 12 C. 427 ; 15 C. 194. (f) Overstaying leave without permission, 29 M. 192=3 Cr. L.J. 468 ; see herein, 6 A. 490 and 6 C. 625 under old law. (g) Unwarrantable personal violence in striking an accused, Burma S.J. (1872-1892) p. 150 ; person arrested detained in custody for more than 24 hours, 19 W.R. 36, Cr. ; 1 W.R. 35. (h) Offence magisterial, 1 W.R. 5, Cr. ; competency of Magistrate, 4 W.R. 2, Cr. ; 22 A. 340 ; 1 Agra H.C.R. 24, Cr. ; Sub-Magistrate not to institute prosecution, *ex motu*, 2 N.W.P. 5 ; jurisdiction over European British subjects, 8 N.W.P. 128 ; Magistrate competent to direct police enquiry, 14 W.R. 41, Cr. (i) Meaning, 25 W.R. 20, Cr. (j) Punishments for *bona fide* mistakes, 19 W.R. 7, Cr.

street or thoroughfare, or to form a procession which would, in the judgment of the Magistrate of the district, or of the sub-division of a district, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice that the persons convening or collecting such assembly or directing or promoting such procession shall apply for a license.

(3) On such application being made, he may issue a license specifying the names of the licensees and defining the conditions on which alone such assembly or such procession is to be permitted to take place and otherwise giving effect to this section: Provided that no fee shall be charged on the application for, or grant of, any such license.

Music in the streets. (4) He may also regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies.

30-A. (1) Any Magistrate or District Superintendent of Police or Assistant District Superintendent of Police or Inspector of Police or any police-officer in charge of a station may stop any procession which violates the conditions of a license granted under the last foregoing section, and may order it or any assembly which violates any such conditions as aforesaid to disperse.

Powers with regard to assemblies and processions violating conditions of license.

(2) Any procession or assembly which neglects or refuses to obey any order given under the last preceding sub-section shall be deemed to be an unlawful assembly.

31. It shall be the duty of the police to keep order on the public roads, and in the public streets, thoroughfares, ghâts and landing-places, and at all other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads and in the public streets, or in the neighbourhood of places of worship, during the time of public worship, and in any case when any road, street, thoroughfare, ghat or landing-place may be thronged or may be liable to be obstructed.

Police to keep order in public roads, etc.

32. Every person opposing or not obeying the orders issued under the last three preceding sections, or violating the conditions of any license (a) granted by the District Superintendent or Assistant District Superintendent of Police for the use of music (b), or for the conduct of assemblies and processions, shall be liable, on conviction before a Magistrate, to a fine not exceeding two hundred rupees.

Penalty for disobeying orders issued under last three sections, etc.

33. Nothing in the last four preceding sections shall be deemed to interfere with the general control of the Magistrate of the district over the matters referred to therein.

Saving of control of Magistrate of district.

Case-law :—(a) Orders and licenses must have previously been issued, 5 C.P.L.R. 92: order forbidding *Jatra*ivals to frequent Railway Stations illegal, 14 A.L.J. 1072—17 Cr. L.J. 448—85 Ind. Cas. 1008. (b) Playing music at night, 5 C.P.L.R. 92: music a nuisance, 5 O.P.L.R. 92.

34. Any person who, on any road or in any open place^(a) or street or thoroughfare within the limits of any town to which this section shall be specially extended by the Local Government, commits any of the following offences, to the obstruction^(b), inconvenience, annoyance, risk, danger or damage of the residents or passengers shall, on conviction before a Magistrate^(c), be liable to a fine not exceeding fifty rupees, or to imprisonment with or without hard labour^(d) not exceeding eight days; and it shall be lawful for any police-officer to take into custody, without a warrant, any person who within his view commits any of such offences, namely:—

First.—Any person who slaughters any cattle^(e) or cleans any carcass; Slaughtering cattle, any person who rides or drives any cattle recklessly or furious riding, etc. furiously, or trains or breaks any horse or other cattle: Cruelty to animals^(f). *Second.*—Any person who wantonly or cruelly beats, abuses^(g) or tortures any animal:

Third.—Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading or for taking up or setting down passengers, or who obstructing passengers. leaves any conveyance in such a manner as to cause inconvenience or danger to the public:

Exposing goods for sale^(h). *Fourth.*—Any person who exposes any goods for sale:

Fifth.—Any person who throws or lays down any dirt, filth, rubbish or any stones or building materials; or who constructs Throwing dirt into street. any cowshed, stable or the like⁽ⁱ⁾, or who causes any offensive matter to run from any house, factory, dungheap or the like:

Being found drunk or riotous. *Sixth.*—Any person who is found drunk or riotous^(j) or who is incapable of taking care of himself:

Seventh.—Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits indecent exposure of person. nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose:

Neglect to protect dangerous places. *Eighth.*—Any person who neglects to fence in or duly to protect any well, tank or other dangerous place or structure:

35.[1] * * * * * Any charge against a police-officer above the rank of a constable under this Act shall be enquired into and determined only by an officer exercising the powers of a Magistrate.

Leg. Changes:—[1] Repealed by Act X of 1882.

Case-law:—(a) Object of the words, 27 C. 655; open verandah is open place, 27 C. 655. (b) Placing tanbans in a thoroughfare, 7 N.W.P.H.C.R. 5. (c) Sub-Magistrate not competent to prosecute *suo motu*, 7 N.W.P. H.C.R. 5. (d) Imprisonment must be simple, L.B.R. (1872—1892), p. 434; U.B.R. (1897—1901), Vol. I, p. 368. (e) Slaughtering cow in an open verandah, 27 C. 655. (f) Horses suffering from running barsati sores, A.W.N. (1887), 67. (g) Over-loading ekka is not cruelly abusing horse, 28 P.R. 1885, Cr. (h) Vouchers, not goods, 4 A.L.J. 44 = A.W.N. (1906), 317. (i) Temporary shed for selling goods no offence, A.W.N. (1881), p. 61. (j) Quarrelling in a public street can come under the term "riotous," 52 P.L.R. 1916, Cr. = 29 P.W.R. 1916 = 86 P.R. 1916, Cr. = 17 Cr. L.J. 278 = 84 Ind. Cas. 993.

36. Nothing contained in this Act shall be construed to prevent any person from being prosecuted under any other Regulation or Act for any offence made punishable by this Act, or from being liable under any other Regulation or Act or any other or higher penalty or punishment than is provided for such offence by this Act :

Power to prosecute under other law not affected (a).

Proviso.

Provided that no person shall be punished twice for the same offence.

37. The provisions of sections 64 to 70, both inclusive, of the Indian Penal Code, and of sections 386 to 389, both inclusive, of the Code of Criminal Procedure, 1860, with respect to fines, shall apply to penalties and fines imposed under this Act on conviction before a Magistrate :

Recovery of penalties and fines imposed by Magistrates.

Provided that, notwithstanding anything contained in section 65 of the first-mentioned Code, any person sentenced to fine under section 34 of this Act may be imprisoned in default of payment of such fine for any period not exceeding eight days.

38. [*Procedure until return is made to warrant of distress.*] Rep.—See the Police Act (1861) Amendment Act, 1895 (VIII of 1895), section 14.

39. [*Imprisonment if distress not sufficient.*] Rep.—See the Police Act (1861) Amendment Act, 1895 (VIII of 1895), section 14.

40. [*Levy of fines from European British subjects.*] Rep.—See the Police Act (1861) Amendment Act, 1895 (VIII of 1895), section 14.

41. All sums paid for the service of process by police officers, and all rewards, forfeitures and penalties or shares of rewards, forfeitures and penalties, which by law are payable to informers shall, when the information is laid by a police-officer, be paid into the General Police Fund.

Rewards to police and informers payable to General Police Fund.

42. All actions and prosecutions (b) against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general police-powers hereby given shall be commenced within three months after the act complained of shall have been committed, and not otherwise; and notice (c) in writing of such action and of the cause thereof shall be given to the defendant, or to the District Superintendent or an Assistant District Superintendent of the district in

Limitation of actions.

Case-law :—(a) False charge of an offence preferred to person empowered to order investigation by police though not followed by further proceedings in Court brings the matter of charge under S. 211, I.P.C., 7 Cr. L.J. 29=9 P.W.R. 1908, Cr.; police constable punished departmentally for taking bribe whether can be punished under S. 163, I.P.C., *supra*, 26 P.R. 1915, Cr.=16 Cr. L.J. 788=31 Ind. Cas. 644. (b) Nature of prosecution referred to in the section, U.B.R. (1897—1901), Vol. I, p. 365; prosecution for acts done not under the Act, U.B.R. (1897—1901), Vol. I, p. 365. (c) Prosecution barred after three months, 38 P.R. 1870, Cr. (d) Object of notice, 7 N.W.P.H. O.R. 237; notice when necessary, 26 A. 220 (222); notice when not necessary, 26 A. 220; objection taken as to notice to be taken at the earliest opportunity, 8 W.R. 425; benefit of notice may be waived, 8 W.R. 425.

which the act was committed, one month at least before the commencement of the action.

No plaintiff shall recover in any such action if tender of sufficient
 Tender of amends. amend shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant, and, though a decree shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial is held shall certify his approbation of the action :

Provided always that no action shall in any case lie where such
 Proviso. officers shall have been prosecuted criminally for the same act.

43. When any action of prosecution shall be brought or any proceedings held against any police-officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate.

Such plea shall be proved by the production of the warrant directing the act, and purporting to be signed by such Magistrate and the defendant shall thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary, unless the Court shall see reason to doubt its being genuine :

Provided always that any remedy which the party may have against the authority issuing such warrant shall not be affected by anything contained in this section.

44. It shall be the duty of every officer in charge of a police-station to keep a general diary in such form as shall, from time to time, be prescribed by the Local Government, and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.

The Magistrate of the district shall be at liberty to call for and inspect such diary.

45. The Local Government may direct the submission of such returns by the Inspector-General and other police-officers as to such Local Government shall seem proper, and may prescribe the form in which such returns shall be made.

46. (1) This Act shall not by its own operation take effect in any presidency, province or place. But the Governor General in Council, by an order to be published in the Gazette of India, may extend the whole or any part of this Act to any

Case-law :—(a) Object of keeping general diary, 20 A. 151 ; refusal to enter report in diary, 20 A. 151 ; making false entry in the diary, 21 W.R. 30, Cr. ; omission to give information, 21 W.R. 30, Cr.

residency, province or place, and the whole or such portion of this Act as shall be specified in such order shall thereupon take effect in such residency, province or place.

(2) When the whole or any part of this Act shall have been so extended, the Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

- (a) to regulate the procedure to be followed by Magistrates and police-officers in the discharge of any duty imposed upon them by or under this Act;
- (b) to prescribe the time, manner and conditions within and under which claims for compensation under section 15-A are to be made, the particulars to be stated in such claims, the manner in which the same are to be verified, and the proceedings (including local enquiries if necessary) which are to be taken consequent thereon; and,
- (c) generally, for giving effect to the provisions of this Act.

(3) All rules made under this Act may from time to time be amended, added to or cancelled by the Local Government.

47. It shall be lawful for the Local Government, in carrying this Act into effect in any part of the territories subject to such Local Government, to declare that any authority which now is or may be exercised by the Magistrate of the district over any village watchman or other village-police-officer for the purposes of police, shall be exercised, subject to the general control of the Magistrate of the district, by the District Superintendent of Police.

FORM.

(See section 8.)

A. B. has been appointed a member of the police-force under Act V of 1861, and is vested with the powers, functions and privileges of a police-officer.

THE POLICE ACT, 1888.

(ACT III OF 1888.)

[Passed on the 17th February, 1888.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1888	III	Police	Rep. in pt., Act X of 1914.

An Act to amend the Law relating to the Regulation of Police.

WHEREAS it is expedient to relax those provisions of Acts for the regulation of police which restrict the employment of police-officers to the

presidency, province or place of the police-establishment of which they are members; It is hereby enacted as follows :—

Title, extent and commencement. 1. (1) This Act may be called the Police Act, 1888.

(2) It extends to the whole of British India; [1]*

[2]

*

*

*

2. (1) Notwithstanding anything in Act XXIV of 1859 (*an Act for the better regulation of the Police within the territories subject to the Presidency of Fort St. George*), Act V of 1861 (*an Act for the regulation of Police*), or the corresponding law for the time being in force in the territories administered by the Governor of Bombay in Council or any Act relating to the police in any presidency-town, the Governor General in Council may, by notification in the Gazette of India, create a general police district embracing parts of two or more presidencies, provinces or places, and direct the enrolment under Act V of 1861 of a police-force for service therein.

Constitution of police-forces for special purposes.

X of 1882.

(2) With respect to such a district and the police-force enrolled therefor, the functions of the Local Government under Act V of 1861, the Code of Criminal Procedure, 1882, and any other enactment for the time being in force relating to police shall, subject to any orders which the Governor General in Council may make in this behalf, be discharged by the Governor General in Council, or by such Local Government or other authority as the Governor General in Council may appoint and the functions of the Inspector-General of Police, Deputy Inspectors-General, Assistant Inspectors-General, District Superintendents of Police and Assistant District Superintendents under Act V of 1861 and any other enactment for the time being in force shall, subject as aforesaid, be discharged by such officer or officers as may be appointed by the authority ordinarily discharging under this sub-section the functions of the Local Government with respect to the district and force.

(3) Subject to any orders which the Governor General in Council may make in this behalf, members of a police-force enrolled for service in a general police district created under sub-section (1) shall have within every part of any presidency, province or place of which any part is included in the district the powers, duties, privileges and liabilities which, as police-officers appointed under Act V of 1861, they have within the district.

(4) Any member of such a force whom the authority ordinarily discharging with respect thereto the functions of the Local Government under sub-section (2) has generally or specially empowered to act under this sub-section may, subject to any orders which the Governor General in Council may make in this behalf, exercise in any part of the local area in which he has the powers of a police-officer under sub-section (3) any of the powers which an officer in charge of a police-station has in that part, and, when so exercising any such power, shall, subject as aforesaid, be deemed to be an officer in charge of a police-station discharging the functions of such an officer within the limits of his station.

Leg. Changes :—[1] & [2] Repealed by Act X of 1914.

(5) Subject to any orders which the Governor General in Council may make in this behalf, a part of a presidency, province or place included in a general police district under sub-section (1) shall not by reason of being included therein cease for the purposes of any enactment relating to police to be part of the presidency, province or place of which it forms part.

(6) For the purposes of this section, and subject to the provisions thereof, Act V of 1861 shall, notwithstanding anything in section 46 of that Act, be deemed to take effect throughout the whole of British India.

3. Notwithstanding anything in any of the Acts mentioned or referred to in the last foregoing section, but subject to

Employment of police-officers beyond the presidency, province or place to which they belong.

any orders which the Governor General in Council may make in this behalf, a member of the police establishment of any presidency, province or place may discharge the functions of a police-officer in any

part of British India beyond the limits of the presidency, province or place, and shall, while so discharging such functions, be deemed to be a member of the police-establishment of that part, and be vested with the powers, functions and privileges, and be subject to the liabilities, of a police-officer belonging to that establishment.

THE INDIAN PORTS ACT, 1908.

(ACT XV OF 1908.)

[Passed on the 18th December, 1908.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1875	XII	Indian Ports	Rep., Act X of 1899.
1882	XVII	Do.	Do.
1885	V	Ports	Do.
N.B.—For further enactments, <i>Vide</i> second schedule to this Act, <i>infra</i> .			
1908	XY	Indian Ports	Am., Act IV of 1911. Omission and Addition, Act VI of 1916.

An Act to consolidate the Enactments relating to Ports and Port-charges.

WHEREAS it is expedient to consolidate the enactments relating to ports and port-charges; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Title and extent. 1. (1) This Act may be called the Indian Ports Act, 1908.

(2) It shall extend, save as otherwise appears from its subject or context,—

- (a) to the ports mentioned in the first schedule, and to such parts of the navigable rivers and channels leading to such ports respectively as have been declared to be subject to Act XXII of 1855 (*for the Regulation of Ports and Port-dues*) or to the Indian Ports Act, 1875, or to the Indian Ports Act, 1889 ;
- (b) to the other ports or parts of navigable rivers or channels to which the Local Government, in exercise of the power herein-after conferred, extends this Act.

(3) But nothing in section 31 or section 32 shall apply to any port, river or channel to which the section has not been specially extended by the Local Government.

Savings.

2. Nothing in this Act shall—

- (i) apply to any vessel belonging to, or in the service of, His Majesty or the Government of India, or to any vessel of war belonging to any Foreign Prince or State, or
- (ii) deprive any person of any right of property or other private right, except as hereinafter expressly provided, or
- (iii) affect any law or rule relating to the customs or any order or direction lawfully made or given pursuant thereto.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

(1) "Magistrate" means a person exercising powers under the Code of Criminal Procedure, 1898, not less than those of a Magistrate of the second class, and includes, in the towns of Calcutta, Madras and Bombay, a Presidency Magistrate ;

(2) "master," when used in relation to any vessel, means, subject to the provisions of any other enactment for the time being in force, any person (except a pilot or harbour-master) having for the time being the charge or control of the vessel :

(3) "pilot" means a person for the time being authorized by the Local Government to pilot vessels :

(4) "port" includes also any part of a river or channel in which this Act is for the time being in force :

(5) "port-officer" is synonymous with master-attendant :

(6) "ton" means a ton as determined or determinable by the rules for the time being in force for regulating the measurement of the net tonnage of British ships : and

(7) "vessel" includes anything made for the conveyance by water of human beings or of property.

CHAPTER II.

POWERS OF THE LOCAL GOVERNMENT.

Power to extend or withdraw the Act or certain portions thereof.

4. (1) [1] * * * the Local Government may, by notification in the local official Gazette,—

- (a) extend this Act to any port in which this Act is not in force or to any part of any navigable river or channel which leads to a port and in which this Act is not in force ;

Leg. Changes :—[1] The words "With the previous sanction of the Governor General in Council" were omitted by Act VI of 1916.

(b) specially extend the provisions of section 31 or section 32 to any port to which they have not been so extended;

(c) withdraw this Act or section 31 or section 32 from any port or any part thereof in which it is for the time being in force.

(2) A notification under clause (a) or clause (b) of sub-section (1) shall define the limits of the area to which it refers.

(3) Limits defined under sub-section (2) may include any piers, jetties, landing-places, wharves, quays, docks and other works made on behalf of the public for convenience of traffic, for safety of vessels, or for the improvement, maintenance or good government of the port and its approaches, whether within or without high-water-mark, and, subject to any rights of private property therein, any portion of the shore or bank within fifty yards of high-water-mark.

(4) In sub-section (3) the expression "high-water-mark" means the highest point reached by ordinary spring tides at any season of the year.

5. (1) The Local Government may, [4] * * *
 Alteration of limits of ports. subject to any rights of private property, alter the limits of any port in which this Act is in force.

(2) When the Local Government alters the limits of a port under sub-section (1), it shall declare or describe, by notification in the local official Gazette, and by such other means, if any, as it thinks fit, the precise extent of such limits.

6. (1) The Local Government may, in addition to any rules which it may make under any other enactment for the time being in force, make such rules, consistent with this Act, as it thinks necessary for any of the following purposes, namely:—

(a) (a) for regulating the time and hours at and during which, the speed at which, and the manner and conditions in and on which, vessels generally or vessels of any class defined in the rules, may enter, leave or be moved in any port subject to this Act;

(b) (b) for regulating the berths, stations and anchorages to be occupied by vessels in any such port;

(c) (c) for striking the yards and top masts, and for rigging-in the booms and yards, of vessels in any such port, and for swinging or taking-in davits, boats and other things projecting from such vessels;

Leg. Changes:—[1] The words "with the previous sanction of the Governor General in Council and" were omitted by Act VI of 1916.

Case-law:—(a) Legality of the rule of Karachi Ports Rules, 1 S.L.R. 301. (b) Order making it obligatory on boat owner to ply for hire, validity of, 17 M. 397=1 Weir 859; causing impediment to service of boat, 1 Weir 860; disobedience of order of conservator of boats, 17 M. 118=1 Weir 857=4 M.L.J. 38. (c) See 17 M. 397; Collector has no power to revoke license, 4 Bom. L.R. 778.

- (d) for the removal or proper hanging or placing of anchors, spars and other things being in or attached to vessels in any such port ;
- (e) for regulating vessels whilst taking-in or discharging passengers, ballast or cargo, or any particular kind of cargo, in any such port, and the stations to be occupied by vessels whilst so engaged ;
- (f) for keeping free passages of such width as may be deemed necessary within any such port, and along or near to the piers, jetties, landing-places, wharves, quays, docks, moorings and other works in or adjoining to the same, and for marking out the spaces so to be kept free ;
- (g) for regulating the anchoring, fastening, mooring and unmooring of vessels in any such port ;
- (h) for regulating the moving and warping of all vessels within any such port and the use of warps therein ;
- (i) for regulating the use of the mooring buoys, chains and other moorings in any such port ;
- (j) for fixing the rates to be paid for the use of such moorings when belonging to the Government, or of any boat, hawser or other thing belonging to the Government ;
- [1] (jj) for regulating the use of piers, jetties, landing places, wharves, quays, warehouses and sheds when belonging to the Government, and for fixing the rates to be paid for the use of the same ; [1]
- (k) for licensing and regulating catamarans plying for hire, and flats and cargo, passenger and other boats plying, whether for hire or not, and whether regularly or only occasionally, in or partly within and partly without any such port, [1] and for licensing and regulating the crews of any such vessels [1] and for determining the quantity of cargo or number of passengers [1] or of the crew [1] to be carried by any such vessels ; [1] and may by such rules provide for the fees payable in respect of any such license, and in the case of passenger vessels plying for hire, for the rates of hire to be charged and the conditions under which such vessels shall be compelled to ply for hire, and further for the conditions under which any license may be revoked [1] ;
- (l) for regulating the use of fires and lights within any such port ;
- (m) for enforcing and regulating the use of signals or signal-lights by vessels by day or by night in any such port ;
- (n) for regulating the number of the crew which must be on board any vessel afloat within the limits of any such port ;
- (o) for regulating the employment of persons engaged in cleaning or painting vessels, or in working in the bilges, boilers or double bottoms of vessels in any such port ;

Leg. Changes :—[1] Added by Act VI of 1916.

- [4](p) subject to the control of the Governor General in Council, for the prevention of danger arising to the public health by the introduction and the spread of any infectious or contagious disease from vessels arriving at, or being in, any such port, and for the prevention of the conveyance of infection or contagion by means of any vessel sailing from any such port, and in particular and without prejudice to the generality of this provision, for—
- (i) the signals to be hoisted and the places of anchorage to be taken up by such vessels having any case, or suspected case, of any infectious or contagious disease on board, or arriving at such port from a port in which, or in the neighbourhood of which, there is believed to be, or to have been at the time when the vessel left such port, any infectious or contagious disease ;
 - (ii) the medical inspection of such vessels and of persons on board such vessels ;
 - (iii) the questions to be answered and the information to be supplied by masters, pilots and other persons on board such vessels ;
 - (iv) the detention of such vessels and of persons on board such vessels ;
 - (v) the duties to be performed in cases of any such disease by masters, pilots and other persons on board such vessels ;
 - (vi) the removal to hospital or other place approved by the health officer and the detention therein of any person from any such vessel who is suffering or suspected to be suffering from any such disease ;
 - (vii) the cleansing, ventilation and disinfection of such vessels or any part thereof and of any articles therein likely to retain infection or contagion, and the destruction of rats or other vermin in such vessels ; and
 - (viii) the disposal of the dead on such vessels ; and
- (q) for securing the protection from heat of the officers and crew of vessels in any such port by requiring the owner or master of any such vessel—
- (i) to provide curtains and double awnings for screening from the sun's rays such portions of the deck as are occupied by, or are situated immediately above, the quarters of the officers and crew ;
 - (ii) to erect windsails so far as the existing portholes or apertures in the deck admit of their being used for ventilating the quarters of the officers and crew ;
 - (iii) when the deck is made of iron and not wood-sheathed, to cover with wooden planks or other suitable non-conducting material such portions of the deck as are situated immediately above the quarters of the officers and crew ;

(iv) when the quarters used by the crew and the galley are separated by an iron bulkhead only, to furnish a temporary screen of some suitable non-conducting material between such quarters and the galley.

(2) The power to make rules under sub-section (1) is subject to the condition of the rules being made after previous publication :

X of 1889.

Provided that nothing in this sub-section shall be construed to affect the validity of any rule in force immediately before the commencement of the Indian Ports Act, 1889, and continued by section 2, sub-section (2), of that Act.

(3) If any person disobeys any rule made under clause (p) of sub-section (1), he shall be punishable for every such offence with fine which may extend to one thousand rupees.

(4) If a master fails wholly or in part to do any act prescribed by any rule made under clause (p) of sub-section (1), the health-officer shall cause such act to be done, and the reasonable expenses incurred in doing such act shall be recoverable by him from such master.

CHAPTER III.

PORT-OFFICIALS AND THEIR POWERS AND DUTIES.

Appointment of conservator. 7. (1) The Local Government shall appoint some officer or body of persons to be conservator of every port subject to this Act.

(2) Subject to any direction by the Local Government to the contrary,—

(a) in ports where there is a port-officer, the port-officer shall be the conservator ;

(b) in ports where there is no port-officer, but where there is a harbour-master, the harbour-master shall be the conservator.

(3) Where the harbour-master is not conservator, the harbour-master and his assistants shall be subordinate to, and subject to the control of, the conservator.

(4) The conservator shall be subject to the control of the Local Government, or of any intermediate authority which that Government may appoint.

Power of conservator to give and enforce directions for certain specified purposes. 8. (1) The conservator of any port subject to this Act may, with respect to any vessel within the port, give directions for carrying into effect any rule^(a) for the time being in force therein under section 6.

(2) If any person wilfully and without lawful excuse refuses or neglects to obey any lawful direction of the conservator, after notice thereof has been given to him, he shall, for every such offence, be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to one hundred rupees for every day during which, after such notice as aforesaid,

Case-law :—(a) See 17 M. 118 = 1 Weir 857 = 4 M.L.J. 86.

he is proved to have wilfully and without lawful excuse continued to disobey the direction.

(3) In case of such refusal or neglect, the conservator may do, or cause to be done, all acts necessary for the purpose of carrying the direction into execution, and may hire and employ proper persons for that purpose, and all reasonable expenses incurred in doing such acts shall be recoverable by him from the person so refusing or neglecting to obey the direction.

9. The conservator of any such port may, in case of urgent necessity,

Power to cut warps and ropes.	out, or cause to be cut, any warp, rope, cable or hawser endangering the safety of any vessel in the port or at or near to the entrance thereof.
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10. (1) The conservator may remove, or cause to be removed, any

Removal of obs- tructions within limits of port.	timber, raft or other thing, floating or being in any part of any such port, which in his opinion obstructs or impedes the free navigation thereof or the lawful use of any pier, jetty, landing-place, wharf, quay, dock, mooring or other work on any part of the shore or bank which has been declared to be within the limits of the port and is not private property.
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(2) The owner of any such timber, raft or other thing shall be liable to pay the reasonable expenses of the removal thereof, and if such owner or any other person has without lawful excuse caused any such obstruction or impediment, or causes any public nuisance affecting or likely to affect such free navigation or lawful use, he shall also be punishable with fine which may extend to one hundred rupees.

(3) The conservator or any Magistrate having jurisdiction over the offence may cause any such nuisance to be abated.

11. If the owner of any such timber, raft or other thing, or the

Recovery of ex- penses of removal.	person who has caused any such obstruction, impediment or public nuisance as is mentioned in the last foregoing section, neglects to pay the reasonable expenses incurred in the removal thereof, within one week after demand, or within fourteen days after such removal has been notified in the local official Gazette or in such other manner as the Local Government by general or special order directs, the conservator may cause such timber, raft or other thing, or the materials of any public nuisance so removed, or so much thereof as may be necessary, to be sold by public auction ;
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and may retain all the expenses of such removal and sale out of the proceeds of the sale, and shall pay the surplus of such proceeds, or deliver so much of the thing or materials as may remain unsold, to the person entitled to receive the same ;

and, if no such person appears, shall cause the same to be kept and deposited in such manner as the Local Government directs ;

and may, if necessary, from time to time, realize the expenses of keeping the same, together with the expenses of sale, by a further sale of so much of the thing or materials as may remain unsold.

12. (1) If any obstruction or impediment to the navigation of any port subject to this Act has been lawfully made, or has become lawful by reason of the long continuance of such obstruction or impediment, or otherwise, the conservator shall report the same for the information of the Local Government, and shall, with the sanction of that Government, cause the same to be removed or altered, making reasonable compensation to the person suffering damage by such removal or alteration.

(2) Any dispute arising concerning such compensation shall be determined according to the law relating to like disputes in the case of land required for public purposes.

13. (1) If any vessel hooks or gets foul of any of the buoys or moorings laid down by or by the authority of the Local Government in any such port, the master of such vessel shall not, nor shall any other person, except in case of emergency, lift the buoy or mooring for the purpose of unhooking or getting clear from the same without the assistance of the conservator ;

and the conservator, immediately on receiving notice of such accident, shall assist and superintend the clearing of such vessel ;

and the master of such vessel shall, upon demand, pay such reasonable expenses as may be incurred in clearing the same.

(2) Any master or other person offending against the provisions of this section shall, for every such offence, be punishable with fine which may extend to one hundred rupees.

Raising or removal of wreck impeding navigation within limits of port.

14. (1) If any vessel is wrecked, stranded or sunk in any such port so as to impede, or be likely to impede, the navigation thereof, the conservator may cause the vessel to be raised, removed or destroyed.

(2) If any property recovered by a conservator acting under sub-section (1) is unclaimed or the person claiming it fails to pay the reasonable expenses incurred by the conservator under that sub-section and a further sum of twenty per cent. of the amount of such expenses, the conservator may sell the property by public auction, if the property is of a perishable nature, forthwith, and, if it is not of a perishable nature, at any time not less than six months after the recovery thereof.

(3) The expenses and further sum aforesaid shall be payable to the conservator out of the sale-proceeds of the property, and the balance shall be paid to the person entitled to the property recovered, or, if no such person appears and claims the balance, shall be held in deposit for payment, without interest, to any person thereafter establishing his right thereto :

Provided that the person makes his claim within three years from the date of the sale.

15. (1) The conservator or any of his assistants may, whenever he suspects that any offence against this Act has been, or is about to be, committed, or whenever it is necessary for him so to do in the performance of any duty imposed upon him by this Act,

Power to board vessels and enter buildings.

and the person appointed under this Act to receive any port-dues, fees or other charges payable in respect of any vessel, may, whenever it is necessary for him so to do in the performance of any duty imposed upon him by this Act,

either alone or with any other person, board any vessel, or enter any building or place, within the limits of any port subject to this Act.

(2) If the master of the vessel, or any person in possession or occupation of the building or place, without lawful excuse, refuses to allow any such person as is mentioned in sub-section (1) to board or enter such vessel, building or place in the performance of any duty imposed upon him by this Act, he shall for every such offence be punishable with fine which may extend to two hundred rupees.

16. (1) For the purpose of preventing or extinguishing fire in any port subject to this Act, the conservator or port-officer may require the master of any vessel within the port to place at his disposal such number as he requires, not exceeding three-fourths, of the crew then under the orders of such master.

Power to require crews to prevent or extinguish fire.

(2) Any master refusing or neglecting to comply with such requisition shall be punishable with fine which may extend to five hundred rupees, and any seaman then under his orders who, after being directed by the master to obey the orders of the conservator or port-officer for the purpose aforesaid, refuses to obey such orders, shall be punishable with fine which may extend to twenty-five rupees.

Appointment and powers of health-officer.

17. (1) The Local Government may appoint at any port subject to this Act an officer to be called the health-officer.

(2) A health-officer shall, subject to the control of the Local Government, have the following powers, within the limits of the port for which he is appointed, namely :—

- (a) with respect to any vessel, the powers conferred on a shipping-master by the Indian Merchant Shipping Act, 1859, section 71 ; 1 of 1859.
- (b) power to enter on board any vessel and medically examine all or any of the seamen or apprentices on board the vessel ;
- (c) power to require and enforce the production of the log-book and any other books, papers or documents which he thinks necessary for the purpose of enquiring into the health and medical condition of the persons on board the vessel ;
- (d) power to call before him and question for any such purpose all or any of those persons and to require true answers to any questions which he thinks fit to ask ;
- (e) power to require any person so questioned to make and subscribe a declaration of the truth of the statements made by him.

18. The Government shall not be responsible for any act or default of any conservator, port-officer or harbour-master, of any port subject to this Act, or of any deputy or assistant of any of the authorities aforesaid, or of any person acting under the control or direction of any such authority, deputy or assistant, or for any act of

Indemnity of Government against act or default of port-official or pilot.

default of any pilot, or for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers or other things belonging to the Government which may be used by the vessel :

Provided that nothing in this section shall protect the Secretary of State for India in Council from a suit in respect of any act done by or under the express order or sanction of the Government.

CHAPTER IV.

RULES FOR THE SAFETY OF SHIPPING AND THE CONSERVATION OF PORTS.

General Rules.

19. (1) No person shall, without lawful excuse, injure, lift, injure, loosen or set adrift any buoy, beacon or mooring fixed or laid down by, or by the authority of, the Local Government in any port subject to this Act.

(2) If any person offends against the provisions of this section, he shall for every such offence be liable, in addition to the payment of the amount of damage done, to fine which may extend to two thousand rupees, or to imprisonment for a term which may extend to two years.

20. If any person wilfully and without lawful excuse loosens or removes from her moorings any vessel within any such port without leave or authority from the owner or master of the vessel, he shall, for every such offence, be punishable with fine which may extend two hundred rupees, or with imprisonment for a term which may extend to six months.

21. (1) No ballast or rubbish, and no other thing likely to form a bank or shoal or to be detrimental to navigation, shall, without lawful excuse, be cast or thrown into any such port or into or upon any place on shore from which the same is liable to be washed into any such port, either by ordinary or high tides, or by storms or land-floods.

(2) Any person who by himself or another so casts or throws any ballast or rubbish or any such other thing, and the master of any vessel from which the same is so cast or thrown shall be punishable with fine which may extend to five hundred rupees, and shall pay any reasonable expenses which may be incurred in removing the same.

(3) If, after receiving notice from the conservator of the port to desist from so casting or throwing any ballast or rubbish or such other thing, any master continues so to cast or throw it, he shall also be liable to simple imprisonment for a term which may extend to two months.

(4) Nothing in this section applies to any case in which the ballast or rubbish or such other thing is cast or thrown into any such port with the consent in writing of the conservator, or within any limits within which such act may be authorized by the Local Government.

22. If any person graves, breams or smokes any vessel in any such port, contrary to the directions of the conservator, or at any time or within any limits at or within which such act is prohibited by the Local Government, he and the master (a) of the vessel shall for every such offence be punishable with fine which may extend to five hundred rupees each.

Graving vessel within prohibited limits.

23. If any person boils or heats any pitch, tar, resin, dammer, turpentine, oil, or other such combustible matter on board any vessel within any such port, or at any place within its limits where such act is prohibited by the Local Government, or contrary to the directions of the conservator, he and the master of the vessel shall for every such offence be punishable with fine which may extend to two hundred rupees each.

Boiling pitch on board vessel within prohibited limits.

24. If any person, by an unprotected artificial light, draws off spirits on board any vessel within any port subject to this Act, he and the master of the vessel shall for every such offence be punishable with fine which may extend to two hundred rupees each.

Drawing spirits by unprotected artificial light.

25. (1) Every master of a vessel in any port subject to this Act shall, when required so to do by the conservator, permit warps or hawsers to be made fast to the vessel for the purpose of warping any other vessel in the port, and shall not allow any such warp or hawser to be let go until required so to do.

Warping.

(2) A master offending against sub-section (1) shall be punishable for every such offence with fine which may extend to two hundred rupees.

26. (1) A master of a vessel shall not cause or suffer any warp or hawser attached to his vessel to be left out in any port subject to this Act after sunset in such a manner as to endanger the safety of any other vessel navigating in the port.

Leaving out warp or hawser after sunset.

(2) A master offending against sub-section (1) shall be punishable for every such offence with fine which may extend to two hundred rupees.

27. If any person, without lawful excuse, discharges any fire-arm in any port subject to this Act, or on or from any pier, landing-place, wharf or quay thereof, except a gun loaded only with gunpowder for the purpose of making a signal of distress, or for such other purpose as may be allowed by the Local Government, he shall for every such offence be punishable with fine which may extend to fifty rupees.

Discharge of fire-arms in port.

28. If the master of any vessel in which fire takes place while lying in any such port wilfully omits to take order to extinguish the fire or obstructs the conservator or the port-officer, or any person acting under the authority of the conservator or port-officer, in extinguishing or attempting to extinguish the fire, he shall be punishable

Penalty on master omitting to take order to extinguish fire.

Case-law :—(a) Master liable for servant's acts only on proof of abetment, 9 O. 849.

with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Unauthorized person not to search for lost stores.

29. (1) No person, without the permission of the conservator, shall, in any port subject to this Act, creep or sweep for anchors, cables or other stores lost or supposed to be lost therein.

(2) If any person offends against the provisions of sub-section (1), he shall be punishable with fine which may extend to one hundred rupees.

Removing stones or injuring shores of port prohibited.

30. (1) No person without the permission of the conservator shall in any port subject to this Act remove or carry away any rock, stones, shingle, gravel, sand or soil or any artificial protection from any part of the bank or shore of the port ;

and no person shall sink or bury in any part of such bank or shore, whether the same is public or private property, any mooring-post, anchor or any other thing, or do any other thing which is likely to injure or to be used so as to injure such bank or shore, except with the permission of the conservator, and with the aid or under the inspection of such person, if any, as the conservator may appoint to take part in or overlook the performance of such work.

(2) If any person offends against sub-section (1), he shall for every such offence be punishable with fine which may extend to one hundred rupees and shall pay any reasonable expenses which may be incurred in repairing any injury done by him to the bank or shore.

Special Rules.

31. (1) No vessel of the measurement of two hundred tons or upwards shall enter, leave or be moved in any port to which this section has been specially extended without having a pilot, harbour-master or assistant of the port-officer or harbour-master on board ;

and no vessel of any measurement less than two hundred tons and exceeding one hundred tons shall enter, leave or be moved in any such port without having a pilot, harbour-master or assistant of the port-officer or harbour-master on board, unless authority in writing so to do has been obtained from the conservator or some officer empowered by him to give such authority.

[1](2) Notwithstanding anything in sub-section (1), the owner or master of a vessel which is by that sub-section required to have a pilot, harbour-master or assistant of the port-officer or harbour-master on board, shall be answerable for any loss or damage caused by the vessel or by any fault of the navigation of the vessel, in the same manner as he would have been if he had not been so required by that sub-section :

Provided that the provisions of this sub-section shall not take effect till the first day of January, 1918, or such earlier date as the Governor General in Council may notify in that behalf in the Gazette of India.

Leg. Changes :—[1] Added by Act VI of 1916.

(3) If any vessel, except in case of urgent necessity, enters, leaves or is moved in the port contrary to the provisions of sub-section (1), the master of the vessel shall for every such offence be punishable with fine which may extend to two hundred rupees, unless upon application to the proper officer the master was unable to procure a pilot, harbour-master or assistant of the port-officer or harbour-master to go on board the vessel.

(4) Nothing in sub-sections (1), (2) and (3) shall apply to native vessels when they are entering, leaving or being moved in the port of Bombay.

(5) If any question arises as to whether any vessel is a native vessel within the meaning of this section, the decision thereon of such authority as the Governor of Bombay in Council may appoint in this behalf shall be conclusive.

32. (1) Every vessel exceeding the measurement of two hundred tons and lying in any port to which this section has been specially extended shall be provided with a proper force-pump and hose and appurtenances, for the purpose of extinguishing any fire which may occur on board.

Provision of certain vessels with fire-extinguishing apparatus.

(2) The master of such a vessel who, having been required by the conservator to comply with the provisions of sub-section (1), neglects or refuses, without lawful excuse, so to do for the space of seven days after such requisition, shall be punishable with fine which may extend to five hundred rupees.

CHAPTER V.

PORT-DUES, FEES AND OTHER CHARGES.

33. (1) [1] Subject to the provisions of sub-section (2) [1] in each of the ports mentioned in the first schedule such port-due, not exceeding the amount specified for the port in the third column of the schedule as the Local Government directs, shall be levied on vessels entering the port and described in the second column of the schedule, but not oftener than the time fixed for the port in the fourth column of the schedule.

Levy of port-dues.

[1] (2) The Local Government may, by notification in the local official Gazette, alter or add to any entry in the first schedule relating to ports within its own province, and this power shall include the power to re-group any such ports :

Provided that, if any such alteration or addition has the effect of increasing the port-dues in any such port, such alteration or addition shall require the sanction of the Governor General in Council. [1]

(3) Whenever the Local Government [2] * * * declares any other port to be subject to this Act, it may, [3] * * * by the same or any subsequent declaration, further declare,—

(a) in the terms of any of the entries in the second column of the first schedule, the vessels which are to be chargeable with port-dues on entering the port,

Leg. Changes:—[1] Added by Act VI of 1916. [2] The words "with the previous sanction of the Governor General in Council" were omitted by Act VI of 1916. [3] The words "with the like sanction" were omitted by Act VI of 1916.

(b) the highest rates at which such dues may be levied in respect of vessels chargeable therewith, and

(c) the times at which such vessels are to be so chargeable.

[1] Provided that, except with the sanction of the Governor General in Council, the rates and the times so declared shall not be respectively higher or shorter than the maximum rate and the shortest time specified and fixed in the first schedule for any port in the province.[1]

(4) All port-dues now leviable in any port shall continue to be so leviable until it is otherwise declared in exercise of the powers conferred by this section.

(5) An order increasing or imposing port-dues under this section shall not take effect till the expiration of sixty days from the day on which the order was published in the local official Gazette.

34. The Local Government may [2] after consulting the authority appointed under section 36[2] exempt [3]subject to such conditions if any, as it thinks fit to impose, any vessel or class of vessels[3] entering a port subject to this Act from payment of port-dues and cancel the exemption, or may vary the rates at which port-dues are to be levied in the port, in such manner as, having regard to the receipts and charges on account of the port, it thinks expedient by reducing or raising the dues, or any of them[4], or may extend the periods for which any vessel or class of vessels entering a port shall be exempt from liability to pay port-dues[4] :

Provided that the rates shall not in any case exceed the amount authorized to be taken by or under this Act.

35. (1) Within any port subject to this Act, fees may be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels, at such rates as the Local Government may direct :

[4] * * *

(2) The fees now chargeable for such services shall continue to be chargeable unless and until they are altered in exercise of the power conferred by sub-section (1).

36. (1) The Local Government shall appoint some officer or body of persons at every port at which any dues, fees or other charges are authorized to be taken by or under this Act to receive the same and, subject to the control of the Local Government, to expend the receipts on any of the objects authorized by this Act.

(2) Such officer or body shall keep for the port a distinct account, to be called the port fund account, showing, in such detail as the Local Government prescribes, the receipts and expenditure of the port, and shall publish annually as soon after the first day of April as may be practicable

Leg. Changes:—[1] Added by Act VI of 1916. [2] Inserted by Act VI of 1916. [3] Substituted by Act VI of 1916, for 'the vessels.' [4] The words "Provided that, in the case of fees for pilotage, the previous sanction of the Governor General in Council has been obtained" were omitted by Act VI of 1916.

an abstract, in such form as that Government prescribes, of the account for the past financial year.

(3) [1] * * * *

(4) All money received under this Act at or on account of any port subject to this Act, excluding receipts on account of pilotage but including—

- (a) fines,
- (b) proceeds of waifs, and
- (c) any balance of the proceeds of a sale under section 14 where no right to the balance has been established on a claim made within three years from the date of the sale,

shall be credited in the port fund account of the port.

(5) All expenses incurred for the sake of any such port, excluding expenses on account of pilotage but including—

- (a) the pay and allowances of all persons upon the establishment of the port,
- (b) the cost of buoys, beacons, lights and all other works maintained chiefly for the benefit of vessels being in or entering or leaving the port or passing through the rivers or channels leading thereto,
- (c) pensions, allowances and gratuities of persons who have been employed in the port under this or any other enactment relating to ports and port-dues, or such portion of those pensions, allowances and gratuities as the Local Government may by rule determine,
- (d) with the previous sanction of the Local Government, contributions towards the support of public hospitals or dispensaries suitable for the reception or relief of seamen or otherwise towards the provision of sanitary superintendence and medical aid for the shipping in the port and for seamen, whether ashore or afloat, belonging to vessels in the port, and
- (e) with the like sanction, contributions towards sailors' homes, institutes, rest-houses and coffee-houses and for other purposes connected with the health, recreation and temporal well-being of sailors,

shall be charged to the port fund account of the port.

(6) Subject to the provisions of any local law as to the disposal of any balance from time to time standing to the credit of a port fund account, any such balance may be temporarily invested in such manner as the Local Government may direct.

37. (1) The Local Government may direct that for the purposes of the last foregoing section any number of ports shall be regarded as constituting a single port, and thereupon all moneys to be credited to the port fund account under sub-section (4) of that section shall form a common port fund account which shall be

Leg. Changes :—[1] Para *re* charging of interest on the advances made by Government was omitted by Act VI of 1916.

available for the payment of all expenses incurred for the sake of any of the ports :

Provided, with respect to the ports of Calcutta, Madras, Bombay, Rangoon, Karachi, Chittagong and Aden, that none of those ports may be grouped with any other port, and that the port fund account of each of those ports shall be kept separate from the port fund account of any other port.

(2) Where ports are grouped by or under this Act, the following consequences ensue, namely :—

(a) the Local Government, in the exercise of its control over expenditure debitable to the common port fund account of the group, may, with the previous sanction of the Governor General in Council, make rules with respect to the expenditure of the fund for the sake of the several ports of the group on the objects authorized by this Act, and shall cause effect to be given to any directions which the Governor General in Council may deem it necessary to issue with respect to such expenditure ; and

(b) The Local Government may exercise its authority under section 34 as regards all the ports in the group collectively or as regards any of them separately.

38. The person to whom any dues, fees or other charges authorized to be taken by or under this Act are paid shall grant Receipts for port-charges. to the person paying the same a proper voucher in writing under his hand, describing the name of his office, the port or place at which the dues, fees or other charges are paid, and the name, tonnage and other proper description of the vessel in respect of which the payment is made.

39. (1) Within twenty-four hours after the arrival within the limits of any port subject to this Act of any vessel liable to the payment of port-dues under this Act, the master of the vessel shall report her arrival to the conservator of the port. Master to report arrival.

(2) A master failing without lawful excuse to make such report within the time aforesaid shall for every such offence be punishable with fine which may extend to one hundred rupees.

(3) Nothing in this section applies to tug-steamers, ferry-steamers or river-steamers plying to and from any of the ports subject to this Act or to ballam boats plying to and from the port of Chittagong.

40. If any vessel liable to the payment of port-dues is in any such port without proper marks on the stem and stern posts thereof for denoting her draught, the conservator may cause the same to be ascertained by means of the operation of hooking, and the master of the vessel shall be liable to pay the expenses of the operation. Conservator may in certain cases ascertain draught and charge expense to master.

Ascertainment of
tonnage of vessel
liable to port-dues.

41. In order to ascertain the tonnage of any vessel liable to pay port-dues the following rules shall be observed, namely :—

- (1) (a) If the vessel is a British registered vessel or a vessel registered under the Indian Registration of Ships Act, 1841, X of 1841, or the Indian Registration of Ships Act (1841) Amendment XI of 1850, Act, 1850, or under any other law for the time being in force for the registration of vessels in British India, the conservator may require the owner or master of the vessel or any person having possession of her register to produce the register for inspection.
- (b) If the owner or master or such person neglects or refuses to produce the register or otherwise to satisfy the conservator as to what is the true tonnage of the vessel in respect of which the port-dues are payable, he shall be punishable with fine which may extend to one hundred rupees, and the conservator may cause the vessel to be measured, and the tonnage thereof to be ascertained, according to the mode of measurement prescribed by the rules for the time being in force for regulating the measurement of British vessels, and in such case the owner or master of the vessel shall also be liable to pay the expenses of the measurement.
- (2) If the vessel is not a British registered vessel or a vessel registered under the Indian Registration of Ships Act, 1841, or the Indian Registration of Ships Act (1841) Amendment Act, 1850, or under any other law X of 1841, XI of 1850, for the time being in force for the registration of vessels in British India, and the owner or master thereof fails to satisfy the conservator as to what is her true tonnage according to the mode of measurement prescribed by the rules for the time being in force for regulating the measurement of British vessels, the conservator shall cause the vessel to be measured and the tonnage thereof to be ascertained according to the mode aforesaid, and in such case the owner or master of the vessel shall be liable to pay the expenses of the measurement.
- (3) If the vessel is a vessel of which the tonnage cannot be ascertained according to the mode of measurement mentioned in clauses (1) and (2), the tonnage of the vessel shall be determined by the conservator on such an estimate as may seem to him to be just.

42. If the master of any vessel in respect of which any port-dues, fees or other charges are payable under this Act, refuses or neglects to pay the same on demand, the authority appointed to receive such port-dues, fees or other charges may distrain or arrest the vessel, and the tackle, apparel and furniture belonging thereto or any part thereof, and detain the same until the amount due is paid ;

and in case any part of the port-dues, fees or other charges or of the costs of the distress or arrest or of the keeping of the vessel or other thing distrained or arrested, remains unpaid for the space of five days next after any such distress or arrest, may cause the vessel or other thing distrained or arrested to be sold, and with the proceeds of such sale may satisfy the port-dues, fees or other charges and the costs including the costs of sale

remaining unpaid, and shall render the surplus, if any, to the master of the vessel upon demand.

No port-clearance to be granted until port-charges are paid.

43. The officer of Government whose duty it is to grant a port-clearance for any vessel shall not grant such clearance—

- (a) until her owner or master, or some other person, has paid or secured to the satisfaction of such officer the amount of all port-dues, fees and other charges, and of all fines, penalties and expenses to which the vessel or her owner or master is liable under this Act;
- (b) until all expenses, which by the Merchant Shipping Act, 1894, section 207, are to be borne by her owner, incurred since her arrival in the port from which he seeks clearance, have been paid.

57 & 58 Vict.,
c. 60.

44. (1) If the master of any vessel in respect of which any such sum as is mentioned in the last foregoing section is payable causes her to leave any port without having paid the sum, the authority appointed to receive port-dues, fees and other charges at the port under this Act may require in writing the authority appointed to receive port-dues, fees and other charges under this Act at any other port in British India to which she may proceed, or in which she may be, to levy the sum.

(2) The authority to whom the requisition is directed shall proceed to levy such sum in the manner prescribed in section 42, and a certificate purporting to be made by the authority appointed to receive port-dues, fees and other charges at the port where such sum as is mentioned in the last foregoing section became payable, stating the amount payable, shall be sufficient *prima facie* proof of such amount in any proceeding under section 42 and also (in case the amount payable is disputed) in any subsequent proceeding under section 59.

Penalty for evading payment of port-charges.

45. (1) If the master of a vessel evades the payment of any such sum as is mentioned in section 43, he shall be punishable with fine which may extend to five times the amount of the sum.

(2) In any proceeding before a Magistrate on a prosecution under sub-section (1), any such certificate as is mentioned in section 44, sub-section (2), stating that the master has evaded such payment, shall be sufficient *prima facie* proof of the evasion, unless the master shows to the satisfaction of the Magistrate that the departure of the vessel without payment of the sum was caused by stress of weather, or that there was lawful or reasonable ground for such departure.

(3) Any Magistrate having jurisdiction under this Act in any port to which the vessel may proceed, or in which she may be found, shall be deemed to have jurisdiction in any proceeding under this section.

46. A vessel entering any port subject to this Act (other than a port in Burma) in ballast and not carrying passengers shall be charged with a port-due at a rate to be determined by the Local Government and not exceeding three-fourths of the rate with which she would otherwise be chargeable.

Port-due on vessels in ballast.

47. When a vessel enters a port subject to this Act, but does not

Port-due on vessels
not discharging or
taking in cargo.

(with the exception of such unshipment and reshipment as may be necessary for purposes of repair), she shall be charged with a port-due at a rate to be determined by the Local Government and not exceeding half the rate with which she would otherwise be chargeable.

Port-dues not to
be chargeable in
certain cases.

48. No port-due shall be chargeable in respect of—

- (a) any pleasure-yacht, or
- (b) any vessel which, having left any port, is compelled to re-enter it by stress of weather or in consequence of having sustained any damage, or
- (c) any vessel which, having entered any port within the territories administered by the Governor of Fort Saint George in Council, leaves it within forty-eight hours without discharging or taking in any passengers or cargo.

49. (1) The Local Government may, by notification in the local

Power to impose
hospital port-dues.

official Gazette, order that there shall be paid in respect of every vessel entering any port subject to this Act, within a reasonable distance of which there

is a public hospital or dispensary suitable for the reception or relief of seamen requiring medical aid, such further port-dues not exceeding one anna per ton as the Local Government thinks fit.

(2) Such port-dues shall be called hospital port-dues, and the Local Government shall, in making any order under sub-section (1), have regard to any contributions made under section 36, sub-section (5), clause (d).

(3) An order imposing or increasing hospital port-dues shall not take effect till the expiration of sixty days from the day on which the order was published in the local official Gazette.

(4) Whenever the Local Government is satisfied that proper provision has been made by the owners or agents of any class of vessels for giving medical aid to the seamen employed on board such class of vessels, or that such provision is unnecessary in the case of any class of vessels, it may, by notification in the local official Gazette, exempt such class of vessels from any payment under this section.

50. (1) Hospital port-dues shall be applied, as the Local

Application and
account of hospital
port-dues.

Government may direct, to the support of any such hospital or dispensary as aforesaid, or otherwise for providing sanitary superintendence and medical aid for the shipping in the port in which they are levied

and for the seamen belonging to the vessels therein, whether such seamen are ashore or afloat.

(2) The Local Government shall publish annually in the local official Gazette, as soon after the first day of April as may be, an account, for the past financial year, of the sums received as hospital port-dues at each port where such dues are payable, and of the expenditure charged against those receipts.

(3) Such account shall be published as a supplement to the abstract published under section 36, sub-section (2).

CHAPTER VI.

HOISTING SIGNALS.

51. (1) The master of every inward or outward bound vessel on arriving within signal distance of any signal-station established within the limits of the river Hooghly, or within the limits of any part of a river or channel leading to a port subject to this Act, shall, on the requisition of the pilot in charge of the vessel, signify the name of the vessel by hoisting the number by which she is known, or by adopting such other means to this end as may be practicable and usual, and shall keep the signal flying until it is answered from the signal-station.

Master to hoist number of vessel.

(2) If the master of a vessel arriving as aforesaid offends against sub-section (1), he shall be punishable for every such offence with fine which may extend to one thousand rupees.

52. (1) Every pilot in charge of a vessel shall require the number of the vessel to be duly signalled as provided by the last foregoing section.

Pilot to require master to hoist number.

(2) When, on such requisition from the pilot, the master refuses to hoist the number of a vessel, or to adopt such other means of making her name known as may be practicable and usual, the pilot may, on arrival at the first place of safe anchorage, anchor the vessel and refuse to proceed on his course until the requisition has been complied with.

53. Any pilot in charge of a vessel who disobeys, or abets disobedience to, any of the provisions of this Chapter shall be punishable with fine which may extend to five hundred rupees for each instance of such disobedience or abetment, and in addition shall be liable to have his authority to act as a pilot withdrawn.

Penalty on pilot disobeying provisions of this Chapter.

CHAPTER VII.

PROVISIONS WITH RESPECT TO PENALTIES.

54. If any person disobeys any rule or order which a Local Government has made in pursuance of this Act and for the punishment of disobedience to which express provision has not been made elsewhere in this Act, he shall be punishable for every such offence with fine which may extend to one hundred rupees.

Penalty for disobedience to rules and orders of the Local Government.

55. All offences against this Act shall be triable by a Magistrate, and any Magistrate may, by warrant under his hand, cause the amount of any fine imposed upon the owner or master of any vessel, for any offence committed on board of the vessel or in the management thereof or otherwise in relation thereto, whereof the owner or master is convicted, to be levied by distress and sale of the vessel, and the tackle, apparel and furniture thereof, or so much thereof as is necessary.

Offences how triable, and penalties how recovered.

56. (1) In case of any conviction under this Act, the convicting Magistrate may order the offender to pay the costs of the conviction in addition to any fine or expenses to which he may be liable.

(2) Such costs may be assessed by the Magistrate and may be recovered in the same manner as any fine under this Act.

57. (1) If any dispute arises as to the sum to be paid in any case as expenses or damages under this Act, it shall be determined by a Magistrate upon application made to him for that purpose by either of the disputing parties.

(2) Whenever any person is liable to pay any sum, not exceeding one thousand rupees, as expenses or damages under this Act, any Magistrate, upon application made to him by the authority to whom the sum is payable, may, in addition to or instead of any other means for enforcing payment, recover the sum as if it were a fine.

58. Whenever any fine, expenses or damages is or are levied under this Act, by distress and sale, the costs of the distress and sale may be levied in addition to such fine, expenses or damages, and in the same manner.

59. If any dispute arises concerning the amount leviable by any distress or arrest under this Act or the costs payable under the last foregoing section, the person making the distress or using the arrest may detain the goods distrained or arrested, or the proceeds of the sale thereof, until the amount to be levied has been determined by a Magistrate, who, upon application made to him for that purpose, may determine the amount and award such costs to be paid by either of the parties to the other of them as he thinks reasonable, and payment of such costs, if not paid on demand, shall be enforced as if they were a fine.

60. (1) Any person offending against the provisions of this Act in any port subject to this Act shall be punishable by any Magistrate having jurisdiction over any district or place adjoining the port.

(2) Such Magistrate may exercise all the powers of a Magistrate under this Act, in the same manner and to the same extent as if the offence had been committed locally within the limits of his jurisdiction, notwithstanding that the offence may not have been committed locally within such limits, and, in case any such Magistrate exercises the jurisdiction hereby vested in him, the offence shall be deemed, for all purposes, to have been committed locally within the limits of his jurisdiction.

61. (1) No conviction, order or judgment of any Magistrate under this Act shall be quashed for error of form or procedure, but only on the merits, and it shall not be necessary to state, on the face of the conviction, order or judgment, the evidence on which it proceeds.

(2) If no jurisdiction appears on the face of the conviction, order or judgment, but the depositions taken supply that defect, the conviction, order or judgment shall be aided by what so appears in the depositions.

CHAPTER VIII.

SUPPLEMENTAL PROVISIONS.

62. (1) If any vessel belonging to any of His Majesty's subjects, or sailing under British colours, hoists, carries or wears, within the limits of any port subject to this Act, any flag, jack, pennant or colours, the use whereof on board such vessel has been prohibited by the Merchant Shipping Act, 1894, or any other Statute now or hereafter to be in force, or by any proclamation made or to be made in pursuance of any such Statute, or by any of His Majesty's regulations in force for the time being, the master of the vessel shall, for every such offence, be punishable with fine which may extend to fifty rupees.

57 & 58 Vict.,
c. 60

Hoisting unlawful
colours in port.

(2) Such fine shall be in addition to any other penalty recoverable in respect of such an offence.

(3) The conservator of the port, or any officer of His Majesty's Navy or Indian Marine Service, may enter on board any such vessel and seize and take away any flag, jack, pennant or colours so unlawfully hoisted, carried or worn on board the same.

57 & 58 Vict.,
c. 60.

63. Any Magistrate, upon an application being made to him by the Consul of any foreign Power to which section 238 of the Merchant Shipping Act, 1894, has by an Order in Council been, or shall hereafter be, declared to be applicable, or by the representative of such Consul, and upon complaint on oath of the desertion of any seaman, not being a slave, from any vessel of such foreign Power, may, until a revocation of such Order in Council has been publicly notified, issue his warrant for the apprehension of any such deserter, and, upon due proof of the desertion, may order him to be conveyed on board the vessel to which he belongs, or, at the instance of the Consul, to be detained in custody until the vessel is ready to sail, or, if the vessel has sailed, for a reasonable time not exceeding one month :

Provided that a deposit be first made of such sum as the Magistrate deems necessary for the subsistence of the deserter during the detention and that the detention of the deserter shall not be continued beyond twelve weeks.

64. (1) The provisions of sections 10 and 21 shall be applicable to all ports heretofore or hereafter declared by the Local Government to be ports for the shipment and landing of goods but not otherwise subject to this Act, and may be enforced by any Magistrate to whose ordinary jurisdiction any such port is subject.

Application of sec-
tions 10 and 21.

(2) Any penalties imposed by him, and any expenses incurred by his order, under the said provisions shall be recoverable respectively in the manner provided in sections 55 and 57.

(3) In any of the said ports for the shipment and landing of goods the consent referred to in section 21, sub-section (4), may be given by the principal officer of customs at such port or by any other officer appointed in that behalf by the Local Government.

65. Any local authority in which any immoveable property in or near a port is vested may, with the previous sanction of the Local Government, appropriate and either retain and apply, or transfer by way of gift or otherwise, the

Grant of sites for
sailors' institutes.

whole or any part of the property as a site for, or for use as, a sailors' home or other institution for the health, recreation and temporal well-being of sailors.

66. (1) All acts, orders or directions by this Act authorized to be done or given by any conservator may, subject to his control, be done or given by any harbour-master or any deputy or assistant of such conservator or harbour-master.

(2) Any person authorized by this Act to do any act may call to his aid such assistance as may be necessary.

67. Any written notice of a direction given under this Act, left for the master of any vessel with any person employed on board thereof, or affixed on a conspicuous place on board of the vessel, shall, for the purposes of this Act, be deemed to have been given to the master thereof.

68. Every declaration, order and rule of a Local Government made in pursuance of this Act shall be published in the local official Gazette, and a copy thereof shall be kept in the office of the conservator and at the custom-house, if any, of every port to which the declaration, order or rule relates, and shall there be open at all reasonable times to the inspection of any person without payment of any fee.

[1] 68-A. Every authority exercising any powers or jurisdiction in, or relating to, any port to which this Act for the time being applies shall, if so required by an officer authorised by general or special order of the Governor General in Council in this behalf, co-operate in such manner, as such officer may direct, in carrying out any manœuvres in connection with any scheme or preparations for the defence of the said port in time of war, and for this purpose shall, if so required, temporarily place at the disposal of such officer the services of any of its staff and the use of any of its vessels, property, equipment or other material:

Provided, firstly, that if any vessels are placed at the disposal of such officer in accordance with this section, the Government of India shall, in respect of the period during which they are so at his disposal, bear the running expenses of such vessels, and be responsible for any damage thereto.

Explanation—The expression 'running expenses' in this proviso, includes all outlay incurred in connection with the use of the vessels other than any charges for their hire, or for the wages of the officers and crews of such vessels:

Provided, secondly, that any officer making a requisition under this section, shall exercise his powers in such a way as to cause as little disturbance to the ordinary business of the port as is compatible with the exigencies of the efficient carrying out of the manœuvres:

Provided, thirdly, that no suit or other legal proceeding shall lie against any authority for any default occurring by reason only of compliance with a requisition under this section.

[1]68-B. Whenever the Governor General in Council is of opinion that an emergency has arisen which renders it necessary that the duties imposed for the purposes specified in section 68-A on the authorities therein mentioned, or other duties of a like nature should be imposed on such authorities continuously during the existence of the emergency, he may, by general or special order, authorise any officer to require the said authorities to perform such duties until the Governor General in Council is of opinion that the emergency has passed, and the said authority shall comply accordingly, and the provisions of the said section shall apply subject to the following modification, namely:—

The Government of India shall pay any authority, on whom a requisition has been made, such compensation for any loss or damage attributable to such requisition, and for any services rendered or expenditure incurred in complying therewith as, in default of agreement, shall be decided to be just and reasonable, having regard to the circumstances of the case, by the arbitration of a person to be nominated in this behalf by the Governor General in Council, and the decision of such person shall be final.

Repeal.

69. The enactments mentioned in the second schedule are hereby repealed to the extent specified in the fourth column of that schedule.

THE FIRST SCHEDULE.

PORTS, VESSELS CHARGEABLE, RATE OF PORT-DUES AND FREQUENCY OF PAYMENT.

(See sections 1 and 33.)

PART I.—BENGAL.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Calcutta	Sea-going vessels of twenty tons and upwards.	Not exceeding four annas per ton: provided that in the case of <i>dhonis</i> and country vessels employed in the coasting trade, the rate shall be one-half the rate chargeable in respect of other vessels.	Whenever the vessel enters the port except in the case of mail-steamers and coasting-vessels, which shall not be chargeable more than once in sixty days.
	Tug-steamers and river-steamers.	Not exceeding four annas per ton.	Once between the 1st January and the 30th June, and once between the 1st July and the 31st December, in each year.

Leg. Changes:—[1] Added by Act VI of 1916.

PART I.—BENGAL—(Concluded).

Name of port,	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Cuttack Ports,— namely, False Point and Pooree.	Sea-going vessels of ten tons and up- wards.	Not exceeding four annas per ton.	Whenever the vessel enters any one of the ports except in the case of mail-steamers and coast- ing-vessels, which shall not be chargeable more than once in sixty days.
Balasore Ports,— namely, Balasore, Churaman, Laich- hampur, Ohanua, Subarnarekha, Dhamra (Chand- bally) and Sartha.	Ditto ...	Ditto ...	Whenever the vessel enters any one of the ports, except in the case of mail-steamers and coast- ing-vessels, which shall not be chargeable more than once in thirty days.

PART II.—MADRAS PRESIDENCY.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
		<i>Foreign Vessels.</i>	
		(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements or Ceylon calling at Madras, not exceeding four annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again.
Madras ...	Sea-going vessels of fifteen tons and upwards.	(b) In the case of any other foreign ship or steamer calling at Madras, not exceeding four annas a ton.	The due is payable on each entry into the port.
		<i>Coasting Vessels.</i>	
		(c) In the case of a coasting ship calling at Madras, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again.
		(d) In the case of a coasting steamer calling at Madras, not exceeding three annas a ton.	The due is payable once in thirty days.

PART II.—MADRAS PRESIDENCY—(Continued).

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4	
<i>Eastern Group.</i>				
<i>Distri.</i>	<i>Port.</i>		<i>Foreign Vessels.</i>	
Ganjam.	1. Gopalpur.	Sea-going vessels of fifteen tons and upwards.	(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Eastern group, not exceeding three annas per ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
	2. Baruva.			
	3. Calingapatam.		(b) In the case of any other foreign ship or steamer calling at any one port in the Eastern group, not exceeding three annas a ton.	The due is payable on each entry into the port.
Vizagapatam.	4. Bimlipatam.		(c) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
	5. Vizagapatam.			
Godavari.	6. Cocanada.		(d) In the case of any other foreign ship or steamer calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
	7. Coringa.			
Kistna.	8. Narasapur.		<i>Coasting Vessels.</i>	
	9. Perupalem.		(e) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
	10. Masulipatam.			
	11. Nagayalanka.			
Guntur.	12. Kottapalem.		(f) In the case of a coasting steamer calling at one or more ports in the Eastern group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.
	13. Moratata.			
	14. Gangadipalem.			
	15. Nizampatnam.			
	16. Ipurupalem.			
	17. Motupalle.			
	18. Kottapatnam.			

PART II.—MADRAS PRESIDENCY—(Continued).

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1		2	3	4
<i>Eastern Group—contd.</i>			<i>Foreign Vessels.</i>	
Dis-trict.	Port.			
South Arcot.	Nel-lore.		(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Eastern group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
	Chingleput.		(b) In the case of any other foreign ship or steamer calling at any one port in the Eastern group, not exceeding three annas a ton.	The due is payable on each entry into the port.
	21. Ouddalore.			
	22. Porto Novo.			
	23. Thandavaraya-solaganpettai.		(c) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
	24. Tirumalava-sal.			
	25. Tranquebar.			
	26. Nagore.			
	27. Negapatam.			
	28. Velankani.		(d) In the case of any other foreign ship or steamer calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
Tanjore.	29. Toppaturai.			
	30. Point Oalimere.			
	31. Mutupet.			
	32. Adirampatnam.			
	33. Gopalapatnam.			
	34. Kattumavadi.		(e) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
	35. Krishnaji-patnam.			
	36. Ammapatnam.		(f) In the case of a coasting steamer calling at one or more ports in the Eastern group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.
	37. Kottai-patnam.			
	38. Sundara-pandiyapatnam.			

Sea going vessels of fifteen tons and upwards.

PART II.—MADRAS PRESIDENCY—(Continued).

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1		2	3	4
<i>Eastern Group—concl'd.</i>				
Dis- trict.	Port.		<i>Foreign Vessels.</i>	
Madura	{ 39. Vattanam. 40. Tondi. 41. Pudupatnam. 42. Karangadu }	Sea-going vessels of fifteen tons and upwards.	(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Eastern group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
	{ 43. Tirupalan- kudi. 44. Devipatnam. 45. Mudiyan- patnam. }		(b) In the case of any other foreign ship or steamer calling at any one port in the Eastern group, not exceeding three annas a ton.	The due is payable on each entry into the port.
	46. Alagayan- kolam.		(c) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
	{ 47. Attankarai 48. Emanan- gundu. }		(d) In the case of any other foreign ship or steamer calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
	49. Pamban.			
	{ 50. Ramesvaram 51. Mandapam 52. Vedalai. }			
	{ 53. Muttupettai 54. Kilakarai. 55. Ervadi. 56. Valinokkam }		<i>Coasting Vessels.</i>	
			(e) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
	{ 57. Vembar. 58. Vaippar. }		(f) In the case of a coasting steamer calling at one or more ports in the Eastern group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.
Tinnevely.	{ 59. Tuticorin. 60. Ovary. 61. Kayalpatnam 62. Kulasekhara- patnam. }			

PART II.—MADRAS PRESIDENCY—(Continued).

Name of Port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4	
<i>Western Group.</i>				
Dis-trict.	Port.		<i>Foreign Vessels.</i>	
Malabar.	63. Cochin.		(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Western group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
	64. Chavakad.			
	65. Valivangod.		(b) In the case of any other foreign ship or steamer calling at any one port in the Western group, not exceeding three annas a ton.	The due is payable on each entry into the port.
	66. Ponani.			
	67. Kuttayi.			
	68. Parapanna.		(c) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Western group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
	69. Tanur.			
	70. Parpanan-gadi.			
	71. Ferokeh.			
	72. Beyypore.			
	73. Calicut.			
	74. Kappatta.		(d) In the case of any other foreign ship or steamer calling at more than one port in the Western group, not exceeding four and a half annas a ton.	The due is payable once for the voyage
	75. Quilandi.			
	76. Kottakkal.			
	77. Badagara.			
	78. Muttankal.			
	79. Chompayi.			
	80. Kallayi.		<i>Coasting Vessels.</i>	
	81. Talayi.		(e) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
	82. Tellicherry			
	83. Cannanore.		(f) In the case of a coasting steamer calling at one or more ports in the Western group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.
	84. Pudiyangadi.			
	85. Azhikal.			
	86. Ettikulam.			
	87. Kavvayi.			

Sea-going vessels of fifteen tons and upwards.

PART II.—MADRAS PRESIDENCY—(Continued).

Name of Port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1		2	3	4
<i>Western Group—contd.</i>			<i>Foreign Vessels.</i>	
Dis- trict.	Port.		(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Western group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
South Canara.	{ 88. Hosdrug. }	Sea-going vessels of fifteen tons and upwards.	(b) In the case of any other foreign ship or steamer calling at any one port in the Western group, not exceeding three annas a ton	The due is payable on each entry into the port.
	{ 89. Baikal. }			
	{ 90. Kasaragod. }			
	91. Kumbale.			
	92. Manjesvara.		(c) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Western group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
	93. Mangalore.			
	{ 94. Mulki. }			
	{ 95. Padubidri. }			
	{ 96. Ermala. }			
	{ 97. Uchhila. }			
	{ 98. Kaph. }			
	{ 99. Malpe. }			
	100. Hangarakatta or Barkur.		Contd. on next page.	Contd. on next page.
	101. Coondapoor.			

PART II.—MADRAS PRESIDENCY—(Concluded).

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1		2	3	4
<i>Western Group—conold.</i>			<i>Foreign Vessels—conold.</i>	
Dis- trict.	Port.		(d) In the case of any other foreign ship or steamer calling at more than one port in the Western group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
South Canara—concluded.	102. Nyakina-katte. (Nayakkan-kottai).	Sea-going vessels of fifteen tons and upwards.	<i>Coasting Vessels.</i>	
	103. Baindur.		(e) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
	104. Siruru		(f) In the case of a coasting steamer calling at one or more ports in the Western group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.

*Explanations to Part II of the First Schedule.**Explanation 1.—In this Part of the schedule—*

(a) "ship" means a sailing vessel, and "steamer" a steam-vessel;

(b) "coasting ship" or "coasting steamer" means respectively a ship or steamer which at any port discharges cargo exclusively from, or takes in cargo exclusively for, any port in the island of Ceylon or any part of India, between the westernmost part of Sind and the south-easternmost part of Burma; and "coasting steamer" includes a coasting steam-vessel having a general pass VIII of 1878. under section 164 of the Sea Customs Act, 1878;

(c) "foreign ship" or "foreign steamer" means respectively a ship or steamer not being a coasting ship or coasting steamer:

Provided that, for the purpose of the levy of port-dues, a vessel shall not be deemed, during one and the same voyage, to be both a coasting ship or steamer and a foreign ship or steamer, but port-dues shall, in respect of such voyage, be leviable on such vessel either as a coasting or as a foreign ship or steamer, whichever rate is the higher.

Explanation 2.—Ports enclosed in double brackets in the first column of the schedule shall be treated as if they were only one port; every vessel in respect of which such dues have been charged and taken at one of the bracketted ports being exempted from the payment of port-dues on entering another port bracketted with it within the period specified in the fourth column of the schedule.

PART III.—BOMBAY PRESIDENCY.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Bombay ...	Sea-going vessels of ten tons and upwards (except fishing-boats). Tug-steamers, ferry-steamers and river-steamers.	Not exceeding four annas per ton. Ditto, ...	Once in the same month. Once between the 1st January and the 30th June, and once between the 1st July and 31st December, in each year.
Northern Group of Ports.			
1. Gogha ...	Sea-going vessels of ten tons and upwards (except fishing-boats).	Not exceeding three annas per ton : provided that a coasting steamer whenever it enters any port may be charged at a rate to be determined by the Local Government and not exceeding the highest rate of port dues leviable at any port of the group to which such port belongs, and an addition of one-half of such highest rate.	Once in thirty days at the same port : provided that no coasting vessel or coasting steamer, having paid port-dues at any port, shall be chargeable with port-dues again at the same or any other port of the same group within thirty days.
2. Dholera (Whittle Bandar). ...			
3. Tankari ...			
4. Dehegam ...			
5. Kavi ...			
6. Dehoj ...			
7. Broach ...			
8. Bhagwa ...			
9. Surat ...			
10. Matwad ...			
11. Balsar ...			
12. Umarsadi ...			
13. Kolak ...			
14. Kalai ...			
15. Maroli ...			
16. Umbargam ...			
17. Gholwad ...			
18. Dahanu Creek.			
19. Tarapur ...			
20. Olivara Navapur.			
21. Satpati Creek.			
22. Mahim (Kelva).			
23. Kelva ...			
24. Dantiora ...			
25. Arnala ...			
Southern Group of Ports.			
1. Bandra ...			
2. Vesava ...			
3. Manori ...			
4. Utan ...			
5. Bassein ...			
6. Bhiwandi ...			
7. Kalyan ...			
8. Thana ...			
9. Mahul ...			
10. Trombay ...			

PART III.—BOMBAY PRESIDENCY—(Concluded).

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
<i>Southern Group of Ports—conold.</i>			
11. Panwel ...	Sea-going vessels of ten tons and upwards (except fishing-boats).	Not exceeding three annas per ton : provided that a coasting steamer whenever it enters any port may be charged at a rate to be determined by the Local Government and not exceeding the highest rate of port-dues leviable at any port of the group to which such port belongs, and an addition of one-half of such highest rate.	Once in thirty days at the same port : provided that no coasting vessel or coasting steamer, having paid port-dues at any port, shall be chargeable with port-dues again at the same or any other port of the same group within thirty days.
12. Mora ...			
13. Karanja ...			
14. Thal ...			
15. Alibag ...			
16. Revdanda ...			
17. Mandad ...			
18. Bankot ...			
19. Kelshi ...			
20. Harnai ...			
21. Dabhoi ...			
22. Borya ...			
23. Jaygad ...			
24. Varavda ...			
25. Ratnagiri ...			
26. Purangad ...			
27. Jaytapur ...			
28. Vijaydurg ...			
29. Devgad ...			
30. Achra ...			
31. Malwan ...			
32. Nivti ...			
33. Vengurla ...			
34. Redi ...			
35. Kirnapani ...			
36. Tilmati ...			
37. Sadashivgad ...			
38. Karwar, including Baikhol.			
39. Bingi ...	Sea-going vessels of ten tons and upwards (except fishing boats). Tug-steamers and river-steamers.	Not exceeding four annas per ton. Ditto ...	Once in three months. Once between the 1st January and the 30th June, and once between the 1st July and the 31st December, in each year.
40. Chendya ...			
41. Belikeri ...			
42. Ankola ...			
43. Gangavali ...			
44. Tadri ...			
45. Kumpta ...			
46. Honawar ...			
47. Manki ...			
48. Murdeeshwar ...			
49. Shirali ...			
50. Bhatkal ...			
Karachi ...	Sea-going vessels of ten tons and upwards.	Not exceeding three annas per ton.	Once a month.
Aden ...			

PART IV.—BURMA.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Rangoon	Sea-going vessels of 10 tons and upwards.	Not exceeding six annas per ton.	Once in sixty days.
	Tug-steamers and river-steamers.	Not exceeding four annas per ton.	Once between the 1st January and the 30th June, and once between the 1st July and the 31st December, in each year.
Maulmein	Sea-going vessels of 10 tons and upwards, but less than 25 tons.	Ditto	Once in sixty days.
	Sea-going vessels of 25 tons and upwards.	Not exceeding five annas six pies per ton.	Ditto.
Kyaukpny	Sea-going vessels of 10 tons and upwards.	Not exceeding four annas per ton.	Ditto.
Akyab	Ditto	Ditto	Ditto.
Bassein	Sea-going vessels of 10 tons and upwards, but less than 25 tons.	Ditto	Ditto.
	Sea-going vessels of 25 tons and upwards.	Not exceeding five annas six pies per ton.	Ditto.
Tavoy	Sea-going vessels of 10 tons and upwards.	Not exceeding four annas per ton.	Ditto.
Mergui	Ditto	Ditto	Ditto.

PART V.—EASTERN BENGAL AND ASSAM.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Chittagong	Sea-going vessels of ten tons and upwards, not being ballam-boats.	Not exceeding four and a half annas per ton.	Whenever the vessel enters the port, except in the case of mail-steamers and coasting-vessels, which shall not be chargeable more than once in sixty days.
	Tug-steamers and river-steamers.	Ditto	Once between the 1st January and the 30th June, and once between the 1st July and the 31st December, in each year.
	Ballam-boats	Not exceeding one anna per ton.	Whenever the vessel enters the port.

THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

(See section 69.)

Year.	No.	Short title or subject.	Extent of repeal.
1889	...	X The Indian Ports Act, 1889	... So much as is unrepealed.
1891	...	V The Indian Ports Act, 1891	... The whole.
1894	...	II The Indian Ports Act (1889) Amend- ment Act, 1894.	Ditto.
1896	...	IV The Indian Ports Act (1889) Amend- ment Act, 1896.	Ditto.
1901	...	III The Indian Ports Act, 1901	... Ditto.
1903	...	V The Indian Ports (Amendment) Act, 1903.	Ditto.

THE INDIAN POST OFFICE ACT, 1898.

(ACT VI OF 1898.)

[Passed on the 22nd March, 1898.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1837	XVII	Post Office	Rep. Act XVII of 1854.
1838	XX	Do.	Do. do. do.
1839	XVII	Do.	Do. do. do.
1854	XVII	Do.	Do. Act XIV of 1866.
1866	XIV	Do.	Do. Act VI of 1898.
1896	XVI	Amending Act XIV of 1866	Do. do.
1898	VI	Post Office	Rep. in pt., Act XIII of 1899. Rep. in pt., Act X of 1914. Am., Act II of 1903. Do. Act III of 1912. Do. Act XIV of 1914.

N B.—Vide also Sch. II to this Act, *infra*.

An Act to consolidate and amend the Law relating to the Post Office in India.

WHEREAS it is expedient to consolidate and amend the law relating to the Post Office in India ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title, extent, application and commencement.

1. (1) This Act may be called the Indian Post Office Act, 1898.

(2) It extends to the whole of British India, inclusive of [1] * * * British Baluchistan, the Santhal Parganas and the Pargana of Spiti; and it applies also to—

- (a) all native Indian subjects of Her Majesty in any place within and beyond British India;
- (b) all other British subjects within the territories of any Native Prince or Chief in India; and
- (c) all servants of the Queen, whether British subjects or not, within the territories of any Native Prince or Chief in India.

(3) It shall come into force on the first day of July, 1898.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

- (a) the expression "Director General" means the Director General of [2] Posts and Telegraphs [2];
- (b) the expression "inland," used in relation to a postal article, means—
 - (i) posted in British India and addressed to any place in British India or to any place for which a post office is established by the Governor General in Council beyond the limits of British India; or
 - (ii) posted at any post office established by the Governor General in Council beyond the limits of British India and addressed to any place for which any such post office is established or to any place in British India:
- [3] Provided that the expression "inland" shall not apply to any class of postal articles which may be specified in this behalf by the Governor General in Council by notification in the Gazette of India, when posted in or at or addressed to any places or post offices which may be described in such notification :[3]
- (c) the expression "mail bag" includes a bag, box, parcel or any other envelope or covering in which postal articles in course of transmission by post are conveyed, whether it does or does not contain any such article:
- (d) the expression "mail ship" means a ship employed for carrying mails, pursuant to contract or continuing arrangement, by the Government of India or Her Majesty's Government or the Government of any British possession or foreign country:
- (e) the expression "officer of the Post Office" includes any person employed in any business of the Post Office or on behalf of the Post Office:
- (f) the expression "postage" means the duty chargeable for the transmission by post of postal articles:
- (g) the expression "postage stamp" means any stamp provided by the Governor General in Council for denoting postage or other

Leg. Changes :—[1] The words "Upper Burma" repealed by Burma Laws Act (XIII of 1898). [2] The words "Posts and Telegraphs" were substituted by Act XIV of 1914 for "the Post Office of India." [3] Added by Act II of 1903, S. 2.

fees or sums payable in respect of postal articles under this Act, and includes adhesive postage stamps and stamps printed, embossed, impressed or otherwise indicated on any envelop, wrapper, postcard or other article :

- (h) the expression " post office " includes every house, building, room, carriage or place used for the purposes of the Post Office, and every letter-box provided by the Post Office for the reception of postal articles :
- (i) the expression " postal article " includes a letter, postcard, newspaper, book, pattern or sample packet, parcel and every article or thing transmissible by post :
- (j) the expression " Post Master General " includes a Deputy Post Master General or other officer exercising the powers of a Post Master General : and
- (k) the expression " the Post Office " means the department [1] established for the purpose of carrying the provisions of this Act into effect and [1] presided over by the Director General.

Meanings of " in course of transmission by post " and " delivery."

3. For the purposes of this Act,—

- (a) a postal article shall be deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the addressee or of its being returned to the sender or otherwise disposed of under Chapter VII :
- (b) the delivery of a postal article of any description to a postman or other person authorized to receive postal articles of that description for the post shall be deemed to be a delivery to a post office : and
- (c) the delivery of a postal article at the house or office of the addressee or to the addressee or his servant or agent or other person considered to be authorized to receive the article according to the usual manner of delivering postal articles to the addressee, shall be deemed to be delivery to the addressee.

CHAPTER II.

PRIVILEGE AND PROTECTION OF THE GOVERNMENT.

4. (1) Wherever within British India posts or postal communications are established by the Governor General in Council, the Governor General in Council shall have the exclusive privilege of conveying by post, from one place to another, all letters, except in the following cases, and shall also have the exclusive privilege of performing all the incidental services of receiving, collecting, sending, despatching and delivering all letters, except in the following cases, that is to say :—

- (a) letters sent by a private friend in his way, journey or travel, to be delivered by him to the person to whom they are

Leg. Changes :—[1] Inserted by Act XIV of 1914.

directed, without hire, reward or other profit or advantage for receiving, carrying or delivering them ;

- (b) letters solely concerning the affairs of the sender or receiver thereof, sent by a messenger on purpose ; and
- (c) letters solely concerning goods or property, sent either by sea or by land to be delivered with the goods or property which the letters concern, without hire, reward or other profit or advantage for receiving, carrying or delivering them :

Provided that nothing in this section shall authorize any person to make a collection of letters excepted as aforesaid for the purpose of sending them otherwise than by post.

(2) For the purposes of this section and section 5, the expression " letters " includes postcards.

5. Wherever within British India posts or postal communications are established by the Governor General in Council, the following persons are expressly forbidden to collect, carry, tender or deliver letters, or to receive letters for the purpose of carrying or delivering them, although they obtain no hire, reward or other profit or advantage for so doing, that is to say :—

Certain persons expressly forbidden to convey letters.

- (a) common carriers of passengers or goods, and their servants or agents, except as regards letters solely concerning goods in their carts or carriages ; and
- (b) owners and masters of vessels sailing or passing on any river or canal in British India, or between any ports or places in British India, and their servants or agents, except as regards letters solely concerning goods on board, and except as regards postal articles received for conveyance under Chapter VIII.

6. The Secretary of State for India in Council shall not incur any liability by reason of the loss, misdelivery or delay of, or damage to, any postal article in course of transmission by post, except in so far as such liability may in express terms be undertaken by the Governor General in Council as hereinafter provided ; and no officer of the Post Office shall incur any liability by reason of any such loss, misdelivery, delay or damage, unless he has caused the same fraudulently or by his wilful act or default.

Exemption from liability for loss, misdelivery, delay or damage (a).

CHAPTER III.

POSTAGE.

7. (1) The Governor General in Council may, by notification in the Gazette of India, fix the rates of postage and other sums to be charged in respect of postal articles sent by the inland post under this Act, and may make rules as to the scale of weights, terms and conditions subject to which the rates so fixed shall be charged :

Power to fix rates of inland postage.

Case-law :—(a) Liability of Government for loss in conveyance, 1 M.H.C.R. 200.

Provided that the highest rate of postage, when prepaid, shall not exceed the rate set forth for each class of postal articles in the first schedule.

(2) Unless and until such notification as aforesaid is issued, the rates set forth in the said schedule shall be the rates chargeable under this Act.

(3) The Governor General in Council may, by notification in the Gazette of India, declare what packets may be sent by the inland post as book, pattern and sample packets within the meaning of this Act.

Power to make
rules as to payment
of postage and fees
in certain cases.

8. The Governor General in Council may, by rule,—

- (a) require the prepayment of postage on inland postal articles or any class of inland postal articles, and prescribe the manner in which prepayment shall be made ;
- (b) prescribe the postage to be charged on inland postal articles when the postage is not prepaid or is insufficiently prepaid ;
- (c) provide for the redirection of postal articles and the transmission by post of articles so redirected, either free of charge or subject to such further charge as may be specified in the rules ; and
- (d) prescribe the fees to be charged for the " express delivery " of postal articles, in addition to, or instead of, any other postage chargeable thereon under this Act.

Explanation.—" Express delivery " means delivery by a special messenger or conveyance.

Power to make
rules as to registered
newspapers.

9. (1) The Governor General in Council may make rules providing for the registration of newspapers by inland post as registered newspapers.

(2) For the purpose of such registration, every publication, consisting wholly or in great part of political or other news, or of articles relating thereto, or to other current topics, with or without advertisements, shall be deemed a newspaper, subject to the following conditions, namely :—

- (a) that it is published in numbers at intervals of not more than thirty-one days ; and
- (b) that it has a *bona fide* list of subscribers.

(3) An extra or supplement to a newspaper, bearing the same date as the newspaper and transmitted therewith, shall be deemed to be part of the newspaper :

Provided that no such extra or supplement shall be so deemed unless it consists wholly or in great part of matter like that of the newspaper and has the title and date of publication of the newspaper printed at the top of each page.

Explanation.—Nothing in this section or in the rules thereunder shall be construed to render it compulsory to send newspapers by the inland post.

10. (1) Where arrangements are in force with the United Kingdom, or with any British possession or foreign country, for the transmission by post of postal articles between British India and the United Kingdom or such possession or country, the Governor General in Council may, in conformity with the provisions of such arrangements, declare what postage rates and other sums shall be charged in respect of such postal articles, and may make rules as to the scale of weight, terms and conditions subject to which the rates so declared shall be charged.

(2) Unless and until such declaration as aforesaid is made, the existing rates and regulations shall continue in force.

11. (1) The addressee of a postal article on which postage or any other sum chargeable under this Act is due, shall be bound to pay the postage or sum so chargeable on his accepting delivery of the postal article, unless he forthwith returns it unopened :

Provided that, if any such postal article appears to the satisfaction of the Post Master General to have been maliciously sent for the purpose of annoying the addressee, he may remit the postage.

(2) If any postal article on which postage or any other sum chargeable under this Act is due, is refused or returned as aforesaid, or if the addressee is dead or cannot be found, then the sender shall be bound to pay the postage or sum due thereon under this Act.

12. If any person refuses to pay any postage or other sum due from him under this Act in respect of any postal article, the sum so due may, on application made by an officer of the Post Office authorized in this behalf by the written order of the Post Master General, be recovered for the use of the Post Office from the person so refusing, as if it were a fine imposed under this Act, by any Magistrate having jurisdiction where that person may for the time being be resident ; and the Post Master General may further direct that any other postal article, not being on Her Majesty's service, addressed to that person shall be withheld from him until the sum so due is paid or recovered as aforesaid.

13. When a postal article, on which any duty of customs is payable, has been received by post from any place beyond the limits of British India, and the duty has been paid by the postal authorities at any customs-port or elsewhere, the amount of the duty shall be recoverable as if it were postage due under this Act.

Post Office marks
prima facie evidence
of certain facts denoted.

14. In every proceeding for the recovery of any postage or other sum alleged to be due under this Act in respect of a postal article,—

(a) the production of the postal article, having thereon the official mark of the Post Office denoting that the article has been refused, or that the addressee is dead or cannot be found, shall be *prima facie* evidence of the fact so denoted, and

- (b) the person from whom the postal article purports to have come, shall, until the contrary is proved, be deemed to be the sender thereof.

15. The official mark on a postal article denoting that any postage or other sum is due in respect thereof to the Post Office of British India or to the Post Office of the United Kingdom or of any British possession or foreign country, shall be *prima facie* evidence that the sum denoted as aforesaid is so due.

Official mark to be evidence of amount of postage.

CHAPTER IV.

POSTAGE STAMPS.

Provision of postage stamps and power to make rules as to them.

16. (1) The Governor General in Council shall cause postage stamps to be provided of such kinds and denoting such values as he may think necessary for the purposes of this Act.

(2) The Governor General in Council may make rules as to the supply, sale and use of postage stamps.

(3) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) fix the price at which postage stamps shall be sold ;
- (b) declare the classes of postal articles in respect of which postage stamps shall be used for the payment of postage or other sums chargeable under this Act ;
- (c) prescribe the conditions with regard to perforation, defacement and all other matters subject to which postage stamps may be accepted or refused in payment of postage or other sums ;
- (d) regulate the custody, supply and sale of postage stamps ;
- (e) declare the persons by whom and the terms and conditions subject to which postage stamps may be sold ; and
- (f) prescribe the duties and remuneration of persons selling postage stamps.

17. Postage stamps provided under section 16 shall be deemed to be stamps issued by Government for the purpose of revenue within the meaning of the Indian Penal Code, XLV of 1860, and, subject to the other provisions of this Act, shall be used for the prepayment of postage or other sums chargeable under this Act in respect of postal articles, except where the Governor General in Council directs that prepayment shall be made in some other way.

Postage stamps to be deemed to be stamps for the purpose of revenue (a).

CHAPTER V.

CONDITIONS OF TRANSMISSION OF POSTAL ARTICLES.

18. (1) The Governor General in Council may, by rule, provide for the redelivery to the sender, without reference to the consent of the addressee and subject to such conditions (if any) as may be deemed fit, of any postal article in course of transmission by post.

Redelivery to sender of postal article in course of transmission by post.

Case-law :—(a) Twice using postage stamps issued by Government for purposes of revenue if an offence, 5 C.P.L.R. 48, Cr.

(2) Save as provided by any rules that may be made under subsection (1), the sender shall not be entitled to recall a postal article in course of transmission by post.

19. (1) Except as otherwise provided by rule and subject to such conditions as may be prescribed thereby, no person shall send by post any explosive^(a), dangerous, filthy, noxious or deleterious substance, any sharp instrument not properly protected, or any living creature which is either noxious or likely to injure postal articles in course of transmission by post or any officer of the Post Office.

Transmission by post of anything injurious prohibited.

(2) No person shall send by post any article or thing which is likely to injure postal articles in course of transmission by post or any officer of the Post Office.

Transmission by post of anything indecent, etc., prohibited.

20. No person shall send by post—

- (a) any indecent or obscene printing, painting, photograph, lithograph, engraving, book or card, or any other indecent or obscene article, or
- (b) any postal article having thereon, or on the cover thereof, any words, marks or designs of an indecent, obscene^(b), seditious, scurrilous, threatening or grossly offensive character.

Power to make rules as to transmission by post of postal articles.

[1] 21. (1) The Governor General in Council may make rules as to the transmission of articles by post.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) specify articles which may not be transmitted by post ;
- (b) prescribe conditions on which articles may be transmitted by post ;
- (c) provide for the detention and disposal of articles in course of transmission by post in contravention of rules made under clause (a) or clause (b) ;
- (d) provide for the granting of receipts for, and the granting and obtaining of certificates of, posting and delivery of postal articles and the sums to be paid, in addition to any other postage, for such receipts and certificates ; and
- (e) regulate covers, forms, dimensions, maximum weights, and enclosures, and the use of postal articles, other than letters, for making communications.

22. (1) Where the despatch or delivery from a post office of letters would be delayed by the despatch or delivery therefrom at the same time of book, pattern or sample packets and parcels, or any of them, such packets or parcels, or any of them, may, subject to such rules as the Governor General in Council may make in this behalf, be detained in the Post Office so long as may be necessary.

Power to postpone despatch or delivery of certain postal articles.

Leg. Changes:—[1] Substituted by Act III of 1912.

Case-law :—(a) Cocaine is not, 18 A L.J. 356=28 Ind. Cas. 655=16 Cr. L.J. 319=37 A. 289. (b) Obscene postcard sent by post, 2 Cr. L.J. 201=32 C. 247; 3 A. 337; 20 B. 193; 28 A. 100=2 Cr.L.J. 520=A.W.N.(1905), 203.

(2) Where separate parcel posts are established, parcels may be forwarded and conveyed by them, being detained, if necessary, in the Post Office for that purpose.

23. (1) Any postal article sent by post in contravention of any of the provisions of this Act may be detained and either returned to the sender or forwarded to destination, in each case charged with such additional postage (if any) as the Governor General in Council may, by rule, direct.

Power to deal with postal articles posted in contravention of Act.

(2) Any officer in charge of a post office or authorized by the Post Master General in this behalf may open or unfasten any newspaper or any book, pattern or sample packet, in course of transmission by post, which he suspects to have been sent by post in contravention of [1] section 20, clause (a) or of [1] section 21 or of any of the provisions of this Act relating to postage.

(3) Notwithstanding anything in sub-section (1) -

(a) any postal article sent by post in contravention of the provisions of section 19 may, under the authority of the Post Master General, if necessary, be opened and destroyed; and

[2] (b) any postal article sent by post in contravention of the provisions of section 20 may be disposed of in such manner as the Governor General in Council may by rule direct.

24. [2] Except as otherwise provided in this Act, where a postal article suspected to contain any goods of which the import by post or the transmission by post is prohibited by or under any enactment for the time being in force [2], or anything liable to duty, is received for delivery at a post office, the officer in charge of the post office shall send a notice in writing to the addressee inviting him to attend, either in person or by agent, within a specified time at the post office, and shall in the presence of the addressee or his agent, or if the addressee or his agent fails to attend as aforesaid then in his absence, open and examine the postal article:

Power to deal with postal articles containing goods contraband or liable to duty.

Provided, first, that, if the Director General so directs in the case of any post office or class of post offices, the officer in charge of the post office shall call in two respectable persons as witnesses before he opens a postal article in the absence of the addressee or his agent:

Provided, secondly, that in all cases a postal article, after being opened under this section, shall be delivered to the addressee, unless it is required for the purpose of any further proceeding under this or any other law or enactment for the time being in force, and that the opening of the postal article and the circumstances connected therewith shall be immediately reported to the Post Master General:

Provided, thirdly, that nothing in this section shall prevent the detention of parcels, received by post from any place beyond the limits of British India, at the customs-port or other place at which they

Leg Changes :—[1] Inserted by Act III of 1912. [2] Substituted by Act III of 1912.

are received, and the opening of parcels so received by the Customs-authorities for the purpose of levying any duty of customs.

VIII of 1878.

25. Where a notification has been published under section 19 of the Sea Customs Act, 1878, in respect of any goods of any specified description, any officer of the Post Office empowered in this behalf by the Governor General in Council may search, or cause search to be made, for any such goods in course of transmission by post, and shall deliver ^[1] all postal articles reasonably believed or found to contain such goods ^[1] to such officer as the Governor General in Council may appoint in this behalf, and such goods may be disposed of in such manner as the Governor General in Council may direct.

^[2] In carrying out any such search, such officer of the Post Office may open or unfasten, or cause to be opened or unfastened, any newspaper or any book, pattern or sample packet in course of transmission by post.

26. (1) On the occurrence of any public emergency, or in the interest of the public safety or tranquillity, the Governor General in Council, or a Local Government, or any officer specially authorized in this behalf by the Governor General in Council, may, by order in writing, direct that any postal article or class or description of postal articles in course of transmission by post shall be intercepted or detained or ^[1] shall be disposed of in such manner as the authority issuing the order may direct^[1].

(2) If any doubt arises as to the existence of a public emergency, or as to whether any act done under sub-section (1) was in the interest of the public safety or tranquillity, a certificate signed by a Secretary to the Government of India or to the Local Government shall be conclusive proof on the point.

Power to deal with postal articles from abroad bearing fictitious or previously used stamps.

27. (1) Where a postal article is received by post from any place beyond the limits of British India—

(a) bearing a fictitious postage stamp, that is to say, any facsimile or imitation or representation of a postage stamp, or

(b) purporting to be prepaid with any postage stamp which has been previously used to prepay any other postal article,

the officer in charge of the post office at which the postal article is received, shall send a notice to the addressee inviting him to attend, either in person or by agent, within a specified time at the post office to receive delivery of the postal article.

(2) If the addressee or his agent attends at the post office within the time specified in the notice and consents to make known to the officer in charge of the post office the name and address of the sender of the postal article and to redeliver to the officer aforesaid the portion of the postal

Leg. Changes:— [1] Substituted by Act III of 1912. [2] Added by Act III of 1912.

article which bears the address and the fictitious or previously used postage stamp, or, if the postal article is inseparable from the stamp, the entire postal article, the postal article shall be delivered to the addressee or his agent.

(3) If the addressee or his agent fails to attend at the post office within the time specified in the notice, or, having attended within that time, refuses to make known the name and address of the sender or to re-deliver the postal article or portion thereof as required by sub-section (2), the postal article shall not be delivered to him, but shall be disposed of in such manner as the Governor General in Council may direct.

Explanation.—For the purposes of this section, the expression “postage stamp” includes any postage stamp for denoting any rate or duty of postage of any part of Her Majesty’s dominions or of any Native State or foreign country.

CHAPTER VI.

REGISTRATION, INSURANCE AND VALUE-PAYABLE POST.

28. The sender of a postal article may, subject to the other provisions of this Act, have the article registered at the post office at which it is posted, and require a receipt therefor; and the Governor General in Council may, by notification in the Gazette of India, direct that, in addition to any postage chargeable under this Act, such further fee as may be fixed by the notification shall be paid on account of the registration of postal articles.

Power to make rules as to registration.

29. (1) The Governor General in Council may make rules as to the registration of postal articles.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) declare in what cases registration shall be required;
- (b) prescribe the manner in which the fees for registration shall be paid; and
- (c) direct that twice the fee for registration shall be levied on the delivery of a postal article required to be registered on which the fee for registration has not been prepaid.

(3) Postal articles made over to the Post Office for the purpose of being registered, shall be delivered, when registered, at such times and in such manner as the Director General may, by order, from time to time appoint.

Insurance of postal articles.

30. The Governor General in Council may, by notification in the Gazette of India, direct—

- (a) that any postal article may, subject to the other provisions of this Act, be insured at the post office at which it is posted, against the risk of loss or damage in course of transmission by post, and that a receipt therefor shall be granted to the person posting it; and
- (b) that, in addition to any postage and fees for registration chargeable under this Act, such further fee as may be fixed by the notification shall be paid on account of the insurance of postal articles.

31. The Governor General in Council may, by notification in the Gazette of India, declare in what cases insurance shall be required, and direct that any postal article containing anything required to be insured, which has been posted without being insured, shall be returned to the sender or shall be delivered to the addressee, subject to the payment of such special fee as may be fixed by the notification :

Power to require insurance of postal articles.

Provided that the levy of such special fee as aforesaid shall not impose any liability upon the Secretary of State for India in Council in respect of the postal article.

Power to make rules as to insurance.

32. (1) The Governor General in Council may make rules as to the insurance of postal articles.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) declare what classes of postal articles may be insured under section 30 ;
- (b) fix the limit of the amount for which postal articles may be insured ; and
- (c) prescribe the manner in which the fees for insurance shall be paid.

(3) Postal articles made over to the Post Office for the purpose of being insured, shall be delivered, when insured, at such places and times and in such manner as the Director General may, by order, from time to time appoint.

33. Subject to such conditions and restrictions as the Governor General in Council may, by rule, prescribe, the Secretary of State for India in Council shall be liable to pay compensation, not exceeding the amount for which a postal article has been insured, to the sender thereof for the loss of the postal article or its contents, or for any damage caused to it in course of transmission by post :

Liability in respect of postal articles insured.

Provided that the compensation so payable shall in no case exceed the value of the article lost or the amount of the damage caused.

34. The Governor General in Council may, by notification in the Gazette of India, direct that, subject to the other provisions of this Act and to the payment of fees at such rates as may be fixed by the notification, a sum of money specified in writing at the time of posting by the sender of a postal article shall be recoverable on the delivery thereof from the addressee, and that the sum, so recovered, shall be paid to the sender :

Transmission by post of value-payable postal articles.

(a) Provided that the Secretary of State for India in Council shall not incur any liability in respect of the sum specified for recovery, unless and until that sum has been received from the addressee.

Explanation.—Postal articles sent in accordance with the provisions of this section may be described as "value-payable" postal articles.

Case-law :—(a) Proviso did not absolve Post Office from common law liability for delivering a parcel without collecting the money, 15 M.L.J. 226—28 M. 213.

Power to make rules as to value-payable postal articles.

35. (1) The Governor General in Council may make rules as to the transmission by post of value-payable postal articles.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) declare what classes of postal articles may be sent as value-payable postal articles ;
- (b) direct that no postal article shall be so sent unless the sender declares that it is sent in execution of a *bona fide* order received by him ;
- (c) limit the value to be recovered on the delivery of any value-payable postal article ; [1] *
- (d) prescribe the form of declaration to be made by the senders of value-payable postal articles, and the time and manner of the payment of fees.
- [2] (e) provide for the retention and the repayment to the addressee in cases of fraud of money recovered on the delivery of any value-payable postal article ; and
- (f) prescribe the fees to be charged for inquiries into complaints regarding the delivery of or payment for value-payable postal articles [2].

(3) Postal articles shall be made over to the Post Office for the purpose of being sent as "value-payable" and shall be delivered, when so sent, at such times and in such manner as the Director General may, by order, from time to time appoint.

[2] (4) No suit or other legal proceeding shall be instituted against the Secretary of State for India in Council or any officer of the Post Office in respect of anything done, or in good faith purporting to be done, under any rule made under clause (e) of sub-section (2).

36. (1) Where arrangements are in force with the United Kingdom, or with any British possession, Native State or foreign country, for the transmission by post of registered, insured or value-payable postal articles between British India and the United Kingdom or such possession, State or country, the Governor General in Council may make rules to give effect to such arrangements.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

- (a) the form of declaration to be made by the senders of such postal articles as aforesaid ; and
- (b) the fees to be charged in respect thereof.

CHAPTER VII.

UNDELIVERED POSTAL ARTICLES.

Power to make rules as to disposal of undelivered postal articles.

37. (1) The Governor General in Council may make rules as to the disposal of postal articles which for any reason cannot be delivered (hereinafter referred to as "undelivered postal articles").

Leg. Changes:—[1] Omitted by Act III of 1912. [2] Added by Act III of 1912.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the period during which undelivered postal articles at a post office shall remain in that office; and
- (b) provide for the publication of lists of undelivered postal articles, or of any class of undelivered postal articles.

(3) Every undelivered postal article, after being detained at a post office for the period prescribed by rule under the foregoing provisions of this section, shall be either forwarded, free of further charge, to the post office at which it was posted, for return to the sender, or sent to the office of the Post Master General.

Disposal of undelivered postal articles at office of Post Master General.

38. (1) Every postal article received at the office of the Post Master General under sub-section (3) of section 37 shall be dealt with as follows:—

- (a) if practicable, it shall be redirected and forwarded by post to the addressee; or
- (b) if it cannot be redirected and forwarded as aforesaid, it shall be opened by some officer, appointed by the Post Master General in this behalf and bound to secrecy, in order to ascertain the name and address of the sender.

(2) If the name and address of the sender are so ascertained, it shall be returned by post to the sender, free of further charge or subject to such further charge as the Governor General in Council may, by rule, direct.

39. Undelivered postal articles, which cannot be disposed of under the foregoing provisions, shall be detained in the office of the Post Master General for such further period (if any), and shall be dealt with in such manner, as the Governor General in Council may, by rule, direct:

Final disposal of undelivered postal articles.

Provided that—

- (a) letters and postcards shall be destroyed;
- (b) money or saleable property, not being of a perishable nature, found in any undelivered postal article, shall be detained for a period of one year in the office of the Post Master General, and, if on the expiration of that period no person has established his right thereto, shall, if money, be credited to the Post Office, and, if saleable property, be sold, the sale-proceeds being credited to the Post Office.

CHAPTER VIII.

SHIP LETTERS.

40. The master of a ship, not being a mail ship, about to depart from any port in British India to any port within, or any port or place beyond, British India, shall receive on board any mail bag tendered to him by any officer of the Post Office for conveyance, granting a receipt therefor in such form as the Governor General in Council may, by rule, prescribe, and shall, without delay, deliver the same at the port or place of destination.

Duty of master of ship, departing from any port in British India and not being a mail ship, to convey mail bags.

41. (1) The master of a ship arriving at any port in British India shall, without delay, cause every postal article or mail bag on board which is directed to that port and is within the exclusive privilege conferred on the Governor General in Council by section 4, to be delivered either at the post office at that port or to some officer of the Post Office authorized in this behalf by the Post Master General.

Duty of master of ship arriving at any port in British India in respect of postal articles and mail bags on board.

(2) If there is on board any postal article or mail bag which is directed to any other place within British India and is within the exclusive privilege aforesaid, the master shall, without delay, report the fact to the officer in charge of the post office at the port of arrival and act according to the directions he may receive from such officer, and the receipt of such officer shall discharge him from all further responsibility in respect of the postal article or mail bag.

42. The Governor General in Council may, by notification in the Gazette of India, declare what gratuities shall be allowed to masters of ships, not being mail ships, in respect of postal articles received by them for conveyance on behalf of the Post Office; and the master of a ship, not being a mail ship, about to leave any port in British India as aforesaid shall, if he receives on board a mail bag for conveyance, be entitled to demand and obtain immediately the amount of the gratuity payable under this section in respect of the mail bag and its contents.

Allowance of gratuities for conveyance of postal articles by ships other than mail ships.

CHAPTER IX.

MONEY ORDERS.

Power to maintain money order system and to make rules as to remittances thereby.

43. (1) The Governor General in Council may provide for the remitting of small sums of money through the Post Office by means of money orders, and may make rules as to such money orders.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

- (a) the limit of amount for which money orders may be issued ;
- (b) the period during which money orders shall remain current, and
- (c) the rates of commission or the fees to be charged on money orders or in respect thereof.

44. (1) Subject to such conditions as the Governor General in Council may, by rules made under section 43, prescribe in respect of the levy of additional rates of commission or fees or any other matters, a person remitting money through the Post Office by means of a money order may require that the amount of the order, if not paid to the payee, be repaid to him, or be paid to such person other than the original payee as he may direct.

Power for remitter to recall money order or alter name of payee.

(2) If neither the payee nor the remitter of a money order can be found, and if within the period of one year from the date of the issue of the order no claim is made by such payee or remitter, the amount of such order shall not be claimable from the Government.

45. The Governor General in Council may authorize the issue, in such form as may be suitable, of money orders, to be called postal orders or by such other designation as may be deemed appropriate, for certain fixed amounts, and may make rules as to the rates of commission to be charged thereon and the manner in which, and conditions subject to which, they may be issued, paid and cancelled :

Provided that no such order shall be issued for an amount in excess of ten rupees.

46. (1) Where arrangements are in force with the United Kingdom, or with any British possession, Native State or foreign country, for the issue and payment through the Post Office of money orders between British India and the United Kingdom or such possession, State or country, the Governor General in Council may make rules to give effect to such arrangements.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

- (a) the manner in which, and the conditions subject to which, such orders may be issued and paid in British India ; and
- (b) the rates of commission to be charged thereon.

47. If any person, without reasonable excuse the burden of proving which shall lie on him, neglects or refuses to refund—

- (a) any amount paid to him in respect of a money order by an officer of the Post Office in excess of what ought to have been paid to him in respect thereof, or
- (b) the amount of a money order paid by an officer of the Post Office to him instead of to some other person to whom it ought to have been paid,

such amount shall be recoverable by an officer of the Post Office authorized by the Post Master General in this behalf from the person so neglecting or refusing as if it were an arrear of land-revenue due from him.

48. No suit or other legal proceeding shall be instituted against the Secretary of State for India in Council or any officer of the Post Office in respect of—

- (a) anything done under any rules made by the Governor General in Council under this Chapter ; or
- (b) the wrong payment of a money order caused by incorrect or incomplete information given by the remitter as to the name and address of the payee, provided that, as regards incomplete information, there was reasonable justification for accepting

- the information as a sufficient description for the purpose of identifying the payee; or
- (c) the payment of any money order being refused or delayed by, or on account of, any accidental neglect, omission or mistake, by, or on the part of, an officer of the Post Office, or for any other cause whatsoever, other than the fraud or wilful act or default of such officer; or
 - (d) any wrong payment of a money order after the expiration of one year from the date of the issue of the order; [1] or
- [1] (e) any wrong payment or delay in payment of a money order beyond the limits of British India, by an officer of any Post Office, not being one established by the Governor General in Council.[1]

CHAPTER X

PENALTIES AND PROCEDURE.

Offences by officers of the Post Office (a).

Penalty for misconduct of person employed to carry or deliver mail bags or postal articles.

49. Whoever, being employed to carry or deliver any mail bag or any postal article in course of transmission by post,—

- (a) is in a state of intoxication while so employed, or
- (b) is guilty of carelessness or other misconduct, whereby the safety of any such mail bag or postal article as aforesaid is endangered, or
- (c) loiters or makes delay in the conveyance or delivery of any such mail bag or postal article as aforesaid, or
- (d) does not use due care and diligence safely to convey or deliver any such mail bag or postal article as aforesaid,

shall be punishable with fine which may extend to fifty rupees.

Penalty for voluntary withdrawal from duty, without permission or notice of person employed to carry or deliver mail bags or postal articles.

50. Whoever, being employed to carry or deliver any mail bag or any postal article in course of transmission by post, voluntarily withdraws from the duties of his office without permission or without having given one month's previous notice in writing, shall be punishable with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

51. Whoever, being employed to carry or deliver any postal article in course of transmission by post and required while so employed to keep any register, makes, or causes or suffers to be made, any false entry in the register with intent to induce the belief that he has visited a place, or delivered a postal article, which he has not visited or delivered, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one hundred rupees, or with both.

Penalty for making false entry in register kept by person employed to carry or deliver postal articles.

Leg. Changes :—[1] Added by Act III of 1912.

Case-law :—(a) Abetment, 7 W.R. Cr. 54; jurisdiction over offences under S. 47, 5 B.H.C.R. 96; alternative charges for offences under this Act and under the Penal Code not permissible, 5 S.L.R. 16=10 Ind. Cas. 168=12 Cr. L.J. 224.

Penalty for theft, dishonest misappropriation, secretion, destruction, or throwing away, of postal articles.

52. Whoever, being an officer of the Post Office, commits theft in respect of, or dishonestly misappropriates, or, for any purpose whatsoever, secretes, destroys or throws (a) away, any postal article in course of transmission by post or anything contained therein, shall be punishable (b) with imprisonment for a term which may extend to seven years, and shall also be punishable with fine.

53. Whoever, being an officer of the Post Office, contrary to his duty, opens, or causes or suffers to be opened, any postal article in course of transmission by post, or wilfully detains or delays or causes or suffers to be detained or delayed (c), any such postal article, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both :

Penalty for opening, detaining or delaying postal articles.

Provided that nothing in this section shall extend to the opening, detaining or delaying of any postal article under the authority of this Act or in obedience to the order in writing of the Governor General in Council or the direction of a competent Court.

Penalty for fraud in connection with official marks and for receipt of excess postage.

54. Whoever, being an officer of the Post Office,—

- (a) fraudulently puts any wrong official mark on a postal article, or
- (b) fraudulently alters, removes or causes to disappear any official mark which is on a postal article, or,
- (c) being entrusted with the delivery of any postal article, knowingly demands or receives any sum of money in respect of the postage thereof which is not chargeable under this Act,

shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.

Penalty for fraudulently preparing, altering, secreting or destroying Post Office documents.

55. (d) Whoever, being an officer of the Post Office entrusted with the preparing or keeping of any document, fraudulently prepares the document incorrectly, or alters or secretes or destroys the document, shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.

Case-law :—(a) Person assisting clerk secreting bearing letters to be given to delivery peon for sharing the bearing postage, 14 M. 229=1 Weir 860 ; opening of newspaper by person employed in Post Office, 19 W.R. Cr. 4 ; mere suspicion not evidence of misappropriation, 26 Ind. Cas. 307=16 Cr. L.J. 3 ; statements made in course of the departmental enquiry by postman not evidence, *ibid.* (b) Solitary confinement if can be awarded as part of sentence, 24 P.R. 1879, Cr.; jurisdiction of Magistrate, 3 B.H.C. Cr. 8 ; separate sentences for offences arising out of the same transaction, 2 Weir 454=1 M.H.C.R. 83. (c) Postmaster absenting himself from the station without notice, 1 Weir 72 ; see, also, 1 Weir 860 ; 5 B.H.C. Cr. 36 ; 19 W.R. Cr. 4. (d) Scope of section, 1 Weir 862.

56. Whoever, being an officer of the Post Office, sends by post, or puts into any mail bag, any postal article upon which postage has not been paid or charged in the manner prescribed by this Act, intending thereby to defraud the Government of the postage on such postal article, shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.

57. (1) Whoever, being an officer of the Post Office employed in any place in India beyond the limits of British India in which posts are established by the Governor General in Council, or being appointed to sell postage stamps in any such place, commits therein an offence punishable under this Act, shall be punishable either in the place where the offence was committed by any Court or officer duly empowered by the Governor General in Council to take cognizance of offences committed in that place, or in any part of British India by any Court of competent jurisdiction as if the offence had been committed in that part.

(2) The provisions of section 188 of the Code of Criminal Procedure, 1898, shall not apply to any offence referred to in this section.

V of 1898.

Other Offences.

Penalty for contravention of section 4.

58. (1) Whoever—

- (a) conveys, otherwise than by post, a letter within the exclusive privilege conferred on the Governor General in Council by section 4, or
- (b) performs any service incidental to conveying, otherwise than by post, any letter within the exclusive privilege aforesaid, or
- (c) sends, or tenders or delivers in order to be sent, otherwise than by post, a letter within the exclusive privilege aforesaid, or
- (d) makes a collection of letters excepted from the exclusive privilege aforesaid for the purpose of sending them otherwise than by post,

shall be punishable with fine which may extend to fifty rupees for every such letter.

(2) Whoever, having already been convicted of an offence under this section, is again convicted thereunder, shall, on every such subsequent conviction, be punishable with fine which may extend to five hundred rupees.

59. (1) Whoever, in contravention of the provisions of section 5, carries, receives, tenders or delivers letters, or collects letters, shall be punishable with fine which may extend to fifty rupees for every such letter.

Penalty for contravention of section 5

(2) Whoever, having already been convicted of an offence under this section, is again convicted thereunder, shall, on every such subsequent conviction, be punishable with fine which may extend to five hundred rupees.

Penalty for breach
of rules under sec-
tion 16.

60. Whoever, being appointed to sell postage stamps,—

- (a) takes from any purchaser for any postage stamp or quantity of postage stamps a price higher than that fixed by any rule made under section 16, sub-section (3), clause (a), shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both ; or
- (b) commits a breach of any other rule made under section 16, shall be punishable with fine which may extend to two hundred rupees.

Penalty for con-
travention of section
19 or 20.

61. (a) (1) Whoever, in contravention of the provisions of section 19 or section 20, sends^(b) or tenders or makes over in order to be sent by post any postal article or anything, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(2) The detention in the Post Office of any postal article on the ground of its having been sent in contravention of the provisions of section 19 or section 20, shall not exempt the sender from any proceedings which might have been taken if the postal article had been delivered in due course of post.

62. Whoever places in or against any letter-box provided by the Post Office for the reception of postal articles any fire, match or light, any explosive, dangerous, filthy, noxious or deleterious substance, or any fluid, or commits a nuisance in or against any such letter-box or does anything likely to injure any such letter-box or its appurtenances or contents, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Penalty for affix-
ing without author-
ity thing to, or
painting, tarring or
disfiguring, post
office or post office
letter-box.

63. Whoever, without due authority, affixes any placard, advertisement, notice, list, document, board or other thing in or on, or paints, tars or in any way disfigures any post office or any letter-box provided by the Post Office for the reception of postal articles, shall be punishable with fine which may extend to fifty rupees.

64. Whoever, being required by this Act^(c) to make a declaration in respect of any postal article to be sent by post or the contents or value thereof, makes in his declaration any statement which he knows, or has reason to believe, to be false, or does not believe to be true, shall

Case-law :—(a) Transmission of obscene article and prosecution, 10 C.W.N. 1029 = 4 Cr. L.J. 170. (b) *E.g.*, transmission of postcards bearing an advertisement of patent medicine in obscene language is an offence under the above section, 32 C. 247. (c) Order to send by V.P.P. insured—*Bona fide* of sender, 6 A.L.J. 481 = 9 Cr. L.J. 537 = 2 Ind. Cas. 228.

be punishable with fine which may extend to two hundred rupees, and, if the false declaration is made for the purpose of defrauding the Government, with fine which may extend to five hundred rupees.

Penalty for master of ship failing to comply with the provisions of section 40 or 41.

65. Whoever, being the master of a ship,—

- (a) fails to comply with the provisions of section 40, or,
- (b) without reasonable excuse, the burden of proving which shall lie on him, fails to deliver any postal article or mail bag or to comply with the directions of the officer in charge of the post office at a port of arrival, as required by section 41,

shall be punishable with fine which may extend to one thousand rupees.

66. (1) Whoever, being either the master of a ship arriving at any port in British India or any one on board, knowingly

Penalty for detention of letters on board vessel arriving in port.

has in his baggage or in his possession or custody, after the postal articles on board or any of them have been sent to the post office at the port of arrival, any postal article within the exclusive privilege conferred

on the Governor General in Council by section 4, shall be punishable with fine which may extend to fifty rupees for every such postal article as aforesaid.

(2) Whoever, being such master or other person as aforesaid, detains any such postal article as aforesaid after demand made for it by an officer of the Post Office, shall be punishable with fine which may extend to one hundred rupees for every such postal article.

67. Whoever, except under the authority of this Act or in obedience to the order in writing of the Governor General in Council or the direction of a competent Court, detains

Penalty for detaining mails or opening mail bag.

the mails or any postal article in course of transmission by post, or on any pretence opens a mail bag

in course of transmission by post, shall be punishable with fine which may extend to two hundred rupees :

Provided that nothing in this section shall prevent the detention of an officer of the Post Office carrying the mails or any postal article in course of transmission by post, on a charge of having committed an offence declared to be cognizable by the Code of Criminal Procedure, 1898, or V of 1898. any other law for the time being in force.

68. Whoever fraudulently retains, or wilfully secretes or makes away with, or keeps or detains, or, when required by

Penalty for retaining postal articles wrongly delivered or mail bags.

an officer of the Post Office, neglects or refuses to deliver up, any postal article in course of transmission by post which ought to have been delivered to any other person, or a mail bag containing a postal article,

shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.

69. Whoever, not being an officer of the Post Office, wilfully and maliciously, with intent to injure any person, either opens or causes to be opened any letter which ought to have been delivered, or does any act whereby the due delivery of a letter to any person is prevented or impeded, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both :

Provided that nothing in this section shall apply to a person who does any act to which the section applies, if he is a parent, or in the position of a parent or guardian, of the addressee, and the addressee is a minor or a ward.

General.

Penalty for abetting, or attempting to commit, offences under Act.

70. Whoever abets the commission of any offence punishable under this Act or attempts to commit any offence so punishable, shall be punishable with the punishment provided for that offence.

71. In every prosecution for an offence in respect of a mail bag or of any postal article sent by post, it shall be sufficient, for the purpose of the charge, to describe the mail bag or postal article as being the property of the Post Office, and it shall not be necessary to prove that the mail bag or postal article was of any value.

72. No Court shall take cognizance of an offence punishable under any of the provisions of sections 51, 53, 54, clauses (a) and (b), 55, 56, 58, 59, 61, 64, 65, 66 and 67 of this Act, unless upon complaint made by order of, or under authority from, the Director General or a Post Master General.

CHAPTER XI.

SUPPLEMENTAL.

73. (1) The Governor General in Council may make rules for the management of any zamindari or other district post.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may declare what portions of this Act shall be applicable to zamindari and other district posts and to the persons employed in connection therewith.

General power to make rules and provisions as to rules under Act.

74. (1) In addition to the powers hereinbefore conferred, the Governor General in Council may make rules^(b) to carry out any of the purposes and objects of this Act.

(2) In making any rule under this Act, the Governor General in Council may direct that a breach of it shall be punishable with fine which may extend to fifty rupees.

Case-law:—(a) Prosecution without complaint authorised by Post Master General, 4 Or.L.J. 170=10 C.W.N. 1029. (b) Effect of rules framed under Act, 7 M.L.T. 69=5 Ind. Cas. 728.

(3) All rules made by the Governor General in Council under this Act shall be published in the Gazette of India and, on such publication, shall have effect as if enacted by this Act.

75. The Governor General in Council may, by notification in the Gazette of India, authorize, either absolutely or subject to conditions, the Director General to exercise any of the powers conferred upon the Governor General in Council by this Act, other than a power to make rules.

Delegation of powers, other than rule-making powers, to Director General.

76. [1] *

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77. Nothing in this Act shall derogate from or affect the provisions of the East India Company Act, 1780, or any enactment amending or extending the same. 21 Geo. 3, c. 70.

Saving.

THE FIRST SCHEDULE.

INLAND POSTAGE RATES.

(See section 7.)

LETTERS.

For a weight not exceeding half a tola	...	...	Half an anna.
For a weight not exceeding one tola	...	...	One anna.
For every tola or fraction thereof exceeding one tola	...	...	One anna.

POSTCARDS.

Single	...	...	...	...	Quarter of an anna.
Reply	...	...	...	...	Half an anna.

BOOK, PATTERN AND SAMPLE PACKETS.

For every ten tolas or fraction thereof	Half an anna.
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NEWSPAPERS.

For a weight not exceeding three tolas	Quarter of an anna.
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REGISTERED NEWSPAPERS.

For a weight not exceeding twenty tolas	Half an anna.
For every twenty tolas or fraction thereof exceeding twenty tolas	...	...	Half an anna.

PARCELS.

For a weight not exceeding twenty tolas	...	...	Two annas.
For a weight not exceeding forty tolas	...	...	Four annas.
For every additional forty tolas or fraction thereof exceeding forty tolas	Four annas.

THE SECOND SCHEDULE.

[1] *

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Leg. Changes :—[1] Repealed by Act X of 1914.

THE PRESIDENCY MAGISTRATES' ACT, 1877.

(ACT IV OF 1877.)

[*Passed on the 28th February, 1877.*]

An Act to regulate the procedure and increase the jurisdiction of the Courts of Magistrates in the Presidency-towns.

WHEREAS it is expedient to consolidate and amend the law regulating the procedure of the Courts of Magistrates in the Presidency-towns and to increase the jurisdiction of such Courts; It is hereby enacted as follows:—

1 to 56. [*Rep. by the Code of Criminal Procedure, 1882 (Act X of 1882).*]

57. A fee of eight annas shall be paid for every summons or warrant issued by a Presidency Magistrate, except in the case of a summons to attend and give evidence or to produce documents, in which case there shall be paid a fee of four annas :

Fees for sum-
monses and
warrants.

Provided that such Magistrate may in any case remit any such fee, if he is satisfied that the complainant is unable to pay the same, and shall remit it when the complaint is made by a public servant in the execution of his duty.

Power to remit
fees.

58 to end. [*Rep. by the Code of Criminal Procedure, 1882 (Act X of 1882).*]

THE INDIAN PRESS ACT, 1910.

(ACT I OF 1910.)

[*Passed on the 9th February, 1910.*]

An Act to provide for the better control of the Press.

WHEREAS it is necessary to provide for the better control of the Press; It is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may be called the Indian Press Act, 1910 (a).

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "book" includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed :

Case-law :—(a) Act applicable to all printing presses, 39 M. 1085=5 L.W. 1=(1916) 2 M.W.N. 385; Act imposes no duty on Government to issue any warning or to ask for any explanation before taking action, *ibid.*; Act conferred novel powers on Presidency Magistrates never known nor exercised before, 39 M. 1164=(1916) 2 M.W.N. 497=4 L.W. 625=32 M.L.J. 161.

- (b) "document" includes also any painting, drawing or photograph or other visible representation :
- (c) "High Court" means the highest Civil Court of Appeal for any local area except in the case of the provinces of Ajmer-Merwara and Coorg where it means the High Court of Judicature for the North Western Provinces and the High Court of Judicature at Madras, respectively :
- (d) "Magistrate" means a District Magistrate or Chief Presidency Magistrate :
- (e) "newspaper" (a) means any periodical work containing public news or comments on public news : and
- (f) "printing-press" includes all engines, machinery, types, lithographic stones, implements, utensils, and other plant or materials used for the purpose of printing.

3. (1) Every person keeping a printing-press who is required to make a declaration under section 4 of the Press and Registration of Books Act, 1867, shall, at the time of XXV of 1867. making the same, deposit with the Magistrate before whom the declaration is made security to such an amount, not being less than five hundred or more than two thousand rupees, as the Magistrate may in each case think fit to require, in money or the equivalent thereof in securities of the Government of India :

(c) Provided that the Magistrate may, if he thinks fit, for special reasons to be recorded by him, dispense with the deposit of any security or may (d) from time to time cancel or vary any order under this sub section.

(2) Whenever it appears to the Local Government that any printing-press kept in any place in the territories under its administration, in respect of which a declaration was made prior to the commencement of this Act under section 4 of the Press and Registration of Books Act, 1867, XXV of 1867. is used for any of the purposes described in section 4, sub-section (1), the Local Government may, by notice in writing, require the keeper of such press to deposit with the Magistrate within whose jurisdiction the press is situated security to such an amount, not being less than five hundred or more than five thousand rupees, as the Local Government

Case-law :—(a) Meaning, 7 Ind. Cas. 641=12 C.L.J. 294. (b) Duty of Magistrate under S. 3, ministerial, 39 M. 1164=(1916) 2 M.W.N. 497=4 L.W. 625=32 M.L.J. 151; no limit of time given to applicant within which to make deposit ordered, 15 Bom. L.R. 580=2 Bom. Cr. Cas 92=14 Cr. L.J. 448=20 Ind. Cas. 608=37 B. 555; hence notice under this section construed as meaning that the deposit should be made within reasonable time, *ibid*; S. 3 (1) imposes disability on persons desiring to keep printing presses, 39 M. 1085=5 L.W. 1=(1916) 2 M.W.N. 385; Magistrate to take security from any person making declaration re printing press, *ibid*. (c) The term "proviso" as applied to para. 2 of S. 3 (1) is a misnomer, 39 M. 1164; proviso, something subordinate to main clause, 39 M. 1085=5 L.W. 1=(1916) 2 M.W.N. 385. (d) Indicating that an order dispensing with security is not included in the words "any order within this sub-section," *ibid*.

may think fit to require, in money or the equivalent thereof in securities of the Government of India.

4. (a) (1) Whenever it appears to the Local Government (b) that any printing-press in respect of which any security has been deposited as required by section 3 is used for the purpose of printing or publishing any newspaper (c), book or other document containing any words, signs, or visible representations which are likely (d) or may have a tendency (e), directly or indirectly, whether by inference, suggestion, allusion, metaphor, implication or otherwise—

Power to declare security forfeited in certain cases.

VI of 1908.

- (a) to incite to murder or to any offence under the Explosive Substances Act, 1908, or to any act of violence, or
- (b) to seduce any officer, soldier or sailor in the Army or Navy of His Majesty from his allegiance or his duty, or
- (c) to bring into hatred or contempt (f) His Majesty or the Government established by law in British India (g) or the administration of justice in British India or any Native Prince or Chief under the suzerainty of His Majesty, or any class or section of His Majesty's subjects in British India, or to excite disaffection towards His Majesty or the said Government or any such Prince or Chief, or
- (d) to put any person in fear or to cause annoyance to him and thereby induce him to deliver to any person any property or valuable security, or to do any act which he is not legally bound to do, or to omit to do any act which he is legally entitled to do, or
- (e) to encourage or incite any person to interfere with the administration of the law or with the maintenance of law and order, or
- (f) to convey any threat of injury to a public servant, or to any person in whom that public servant is believed to be interested, with a view to inducing that public servant to do any act or to forbear or delay to do any act connected with the exercise of his public functions,

Case-law :—(a) Section vests Local Government with large discretion, 39 M. 1085 = 5 L.W. 1 = (1916) 2 M.W.N. 385; not *ultra vires* of powers of Imperial Legislature, 39 M. 1085. (b) Jurisdiction of Calcutta High Court to interfere with order made by Local Government of Delhi, 42 C. 730 = 16 Cr. L.J. 698 = 30 Ind. Cas. 476. (c) Newspaper article containing unfair and inaccurate account of event, in effect being to create disaffection not against Indian Government but against Colonial Government, 15 P.R. 1915, Cr. = 16 Cr. L.J. 555 = 29 Ind. Cas. 827 = 33 P.W.R. 1915, Cr. (d) Refers to probable inference that may be drawn, 39 M. 1085. (e) Means the natural effect of the words used on the readers of newspaper concerned, 39 M. 1085 = 5 L.W. 1 = (1916) 2 M.W.N. 386. (f) Mean something more than disapproval or dislike, 39 M. 1085. (g) Meaning of, 39 M. 1085; 19 P.R. 1915, Cr. = 21 P.W.R. 1915, Cr. = 16 Cr. L.J. 274 = 28 Ind. Cas. 322; 210 P.L.R. 1914 = 36 P.W.R. 1914, Cr. = 27 P.R. 1914, Cr. = 15 Cr. L.J. 490 = 24 Ind. Cas. 578 (18 Ind. Cas. 347 = 14 P.R. 1913, Cr. = 6 P.W.R. 1913, Cr. = 14 Cr. L.J. 59 = 37 P.L.R. 1913, R.).

the Local Government may, by notice^(a) in writing to the keeper of such printing-press, stating or describing the words, signs or visible representations which in its opinion are of the nature described above, declare the security deposited in respect of such press and all copies of such newspaper, book or other document wherever found to be forfeited to His Majesty.

(b) *Explanation I.*—In clause (c) the expression "disaffection" ^(c) includes disloyalty and all feelings of enmity.

(d) *Explanation II.*—Comments expressing disapproval of the measures of the Government or of any such Native Prince or Chief as aforesaid with a view to obtain their alteration by lawful means, or of the administrative or other action of the Government or of any such Native Prince or Chief or of the administration of justice in British India without exciting or attempting to excite hatred, contempt or disaffection do not come within the scope of clause (c).

(2) After the expiry of ten days from the date of the issue of a notice under sub-section (1), the declaration made in respect of such press under section 4 of the Press and Registration of Books Act, 1867, shall be XXV of 1867. deemed to be annulled.

5. Where the security given in respect of any press has been declared forfeited under section 4, every person making a fresh declaration in respect of such press under section 4 of the Press and Registration of Books Act, 1867, shall deposit with the Magistrate before whom such declaration is made security to such amount, not being less than one thousand or more than ten thousand rupees, as the Magistrate may think fit to require, in XXV of 1867. money or the equivalent thereof in securities of the Government of India.

6. If after such further security has been deposited the printing-press is again used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which, in the opinion of the Local Government, are of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing to the keeper of such printing-press, stating or describing such words, signs or visible representations, declare—

(a) the further security so deposited,

(b) the printing-press used for the purpose of printing or publishing such newspaper, book or other document or found in or upon the premises where such newspaper, book or other document is, or at the time of printing the matter complained of was, printed, and

(c) all copies of such newspaper, book or other document wherever found, to be forfeited to His Majesty.

Case law :—(a) Notice does not become defective, simply because it does not set out in detail the specific words of the leaflet complained of, 4 Pat. L.J. 174. (b) Protection afforded by the Explanation, extension of, 39 M. 1085 (c) Meaning of, 19 P.R. 1915, Cr.=21 P.W.R. 1915, Cr.=16 Cr. L.J. 274=28 Ind. Cas. 322; 39 M. 1085. (d) Apart from Expl. II, in applying S. 4 (1), intention of editor or writer is not to be considered, 39 M. 1035=5 L.W. 1=(1916) 2 M.W.N. 386; Government to determine how far real danger arises from articles in a vernacular press which result in not allaying excitement but in stirring up fresh troubles, 211 P.L.R. 1914=15 Cr. L.J. 493=24 Ind. Cas. 581=37 P.W.R. 1914, Cr.=28 P.R. 1914, Cr.

7. (1) Where any printing-press is, or any copies of any newspaper, book or other document are, declared forfeited to His Majesty under this Act, the Local Government may direct any Magistrate to issue a warrant empowering any Police officer, not below the rank of a Sub-Inspector, to seize and detain any property ordered to be forfeited and to enter upon and search for such property in any premises—

Issue of search-warrant.

(i) where any such property may be or may be reasonably suspected to be, or

(ii) where any copy of such newspaper, book or other document is kept for sale, distribution, publication or public exhibition or reasonably suspected to be so kept.

(2) Every warrant issued under this section shall, so far as relates to a search, be executed in manner provided for the execution of search-warrants under the Code of Criminal Procedure, 1898.

V of 1898.

8. (1) Every publisher of a newspaper who is required to make a declaration under section 5 of the Press and Registration of Books Act, 1867, shall, at the time of making the same, deposit with the Magistrate before whom the declaration is made security to such an amount, not being less than five hundred or more than two thousand rupees, as the Magistrate may in each case think fit to require, in money or the equivalent thereof in securities of the Government of India :

XXV of 1867. Deposit of security by publisher of newspaper(a).

Provided that if the person registered under the said Act as printer of the newspaper is also registered as the keeper of the press where the newspaper is printed, the publisher shall not be required to deposit security so long as such registration is in force :

Provided further that the Magistrate may, if he thinks fit, for special reasons to be recorded by him, dispense with the deposit of any security or may from time to time cancel or vary any order under this sub-section.

(2) Whenever it appears to the Local Government that any newspaper published within its territories, in respect of which a declaration was made by the publisher thereof prior to the commencement of this Act, under section 5 of the Press and Registration of Books Act, 1867, contains any words, signs or visible representations of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing, require the publisher to deposit with the Magistrate, within whose jurisdiction the newspaper is published, security to such an amount, not being less than five hundred or more than five thousand rupees, as the Local Government may think fit to require, in money or the equivalent thereof in securities of the Government of India.

XXV of 1867.

9. (1) If any newspaper in respect of which any security has been deposited as required by section 8 contains any words, signs or visible representations which, in the opinion of the Local Government, are of the nature described in section 4, sub-section (1), the Local Government

Power to declare security forfeited in certain cases.

Case-law :—(a) Order for security under this section not revisable by High Court, 17 C.W.N. 1245 = 15 Cr. L.J. 145 = 22 Ind. Cas. 721.

may, by notice ^(a) in writing to the publisher of such newspaper, stating or describing such words, signs or visible representations, declare such security and all copies of such newspaper, wherever found, to be forfeited to His Majesty.

(2) After the expiry of ten days from the date of the issue of a notice under sub-section (1), the declaration made by the publisher of such newspaper under section 5 of the Press and Registration of Books Act, XXV of 1867, shall be deemed to be annulled.

10. Where the security given in respect of any newspaper is declared forfeited, any person making a fresh declaration, under section 5 of the Press and Registration of Books Act, XXV of 1867, as publisher of such newspaper or any other newspaper which is the same in substance as the said newspaper shall deposit with the Magistrate before whom the declaration is made security to such amount, not being less than one thousand or more than ten thousand rupees, as the Magistrate may think fit to require, in money or the equivalent thereof in securities of the Government of India.

11. If, after such further security has been deposited, the newspaper again contains any words, signs or visible representations which, in the opinion of the Local Government, are of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing to the publisher of such newspaper, stating or describing such words, signs or visible representations, declare—

(a) the further security so deposited, and

(b) all copies of such newspaper wherever found,

to be forfeited to His Majesty.

12. (1) Where any newspaper, book or other document wherever printed appears to the Local Government to contain any words, signs or visible representations of the nature described in section 4, sub-section (1), the Local Government may, by notification in the local official Gazette, stating the grounds of its opinion, declare such newspaper, book or other document to be forfeited to His Majesty, and thereupon any Police officer may seize the same wherever found, and any Magistrate may by warrant authorise any Police officer not below the rank of Sub-Inspector to enter upon and search for the same in any premises where the newspaper, book or other document may be or may be reasonably suspected to be.

Case law :—(a) Notice when need not contain specific objectionable words, 6 P. W.R. 1913, Or.—18 Ind. Cas. 347—14 Or. L.J. 59—37 P.L.R. 1913—14 P.R. 1913, Or.; after expiry of said ten days from date of issue of notice, declaration made by publisher under S. 5 of Act XXV of 1867 becomes annulled, *ibid.* (b) Provisions in S. 12 re stating grounds of opinion mandatory and not directory, 14 Cr. L.J. 497—20 Ind. Cas. 977—18 C.W.N. 1—41 C. 486.

(2) Every warrant issued under this section shall, so far as relates to a search, be executed in manner provided for the execution of search-warrants under the Code of Criminal Procedure, 1898.

13. The Chief Customs-officer or other officer authorized by the Local Government in this behalf may detain any package brought, whether by land or sea, into British India which he suspects to contain any newspapers, books or other documents of the nature described in section 4, sub-section (1), and shall forthwith forward copies of any newspapers, books or other documents found therein to such officer as the Local Government may appoint in this behalf to be disposed of in such manner as the Local Government may direct.

14. No newspaper printed and published in British India shall be transmitted by post unless the printer and publisher have made a declaration under section 5 of the Press and Registration of Books Act, 1867, and the publisher has deposited security when so required under this Act.

15. Any officer in charge of a post-office or authorised by the Post-Master General in this behalf may detain any article other than a letter or parcel in course of transmission by post, which he suspects to contain—

- (a) any newspaper, book or other document containing words, signs or visible representations of the nature described in section 4, sub-section (1), or
- (b) any newspaper in respect of which the declaration required by section 5 of the Press and Registration of Books Act, 1867, has not been made, or the security required by this Act has not been deposited by the publisher thereof,

and shall deliver all such articles to such officer as the Local Government may appoint in this behalf to be disposed of in such manner as the Local Government may direct.

16. (1) The printer of every newspaper in British India shall deliver at such place and to such officer as the Local Government may, by notification in the local official Gazette, direct, and free of expense to the Government, two copies of each issue of such newspaper as soon as it is published.

(2) If any printer of any such newspaper neglects to deliver copies of the same in compliance with sub-section (1), he shall, on the complaint of the officer to whom the copies should have been delivered or of any person authorised by that officer in this behalf, be punishable on conviction, by a Magistrate having jurisdiction in the place where the newspaper was printed, with fine which may extend to fifty rupees for every default.

17. Any person having an interest in any property in respect of which an order of forfeiture has been made under section 4, 6, 9, 11 or 12 may, within two months from the date of such order^(a), apply to the High Court to set aside such order on the ground that the newspaper, book or other document in respect of which the order was made did not contain any words, signs or visible representations of the nature described in section 4, sub-section (1).

Application to High Court to set aside order of forfeiture.
18. Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges, or, where the High Court consists of less than three Judges, of all the Judges.

Hearing by Special Bench.
19. (1) If it appears to the Special Bench that the words, signs or visible representations contained in the newspaper, book or other document in respect of which the order in question was made were not of the nature described in section 4, sub-section (1), the Special Bench shall set aside the order of forfeiture.

Order of Special Bench setting aside forfeiture(b).
(2) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority (if any) of those Judges.

(3) Where there is no such majority which concurs in setting aside the order in question, such order shall stand.

20. On the hearing of any such application with reference to any newspaper, any copy of such newspaper published after the commencement of this Act may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained

Evidence to prove nature or tendency of newspapers(c).

Case-law :—(a) The question whether objectionable allegations made in a newspaper are true or false, is immaterial to the proceedings under this section, 6 P.W.R. 1913, Cr.=18 Ind. Cas. 347=14 Cr. L.J. 59=37 P.L.R. 1913=14 P.R. 1913, Cr.; all that the Court is to decide is whether pages objected to are of the nature specified in S. 4 (1), *supra*, *ibid.*; the words "within two months from the date of such order" mean within two months from the date of the order of forfeiture and cannot be read as meaning within two months from the date on which notice of the order was served; Limitation Act, S. 5, not applicable, 126 P.L.R. 1914=15 Cr. L.J. 222=32 P.W.R. 1914, Cr.=22 Ind. Cas. 1006=16 P.R. 1914, Cr.; Court not concerned with motives but with results, 210 P.L.R. 1914=36 P.W.R. 1914, Cr.=15 Cr. L.J. 490=24 Ind. Cas. 578=27 P.R. 1914, Cr.; professing loyalty on other occasions immaterial, *ibid.*; what should be shown for an application under S. 17 to be successful, 19 P.R. 1915, Cr.; foundation of High Court's jurisdiction is S. 17, 39 M. 1085; an order under S. 3 (1), *supra*, even if illegal cannot be set aside, 39 M. 1085=5 L.W. 1=(1916) 2 M.W.N. 385; *onus* on person whose security is forfeited, 39 M. 1085=5 L.W. 1=(1916) 2 M.W.N. 385. (b) High Court, duty of, under S. 19, 19 P.R. 1915, Cr.; High Court cannot question legality of forfeiture, 14 Cr. L.J. 497=20 Ind. Cas. 977=18 C.W.N. 1=41 C. 465; if whole tone and nature of article goes beyond fair comment, High Court will not interfere with order of forfeiture of security made, 210 P.L.R. 1914=37 P.W.R. 1914, Cr.=15 Cr. L.J. 490=24 Ind. Cas. 578=27 P.R. 1914, Cr.; application for interference to be rejected or accepted as a whole, 28 P.R. 1914, Cr. (c) Articles other than the one forming subject-matter of charge admissible for purpose specified in S. 20, 15 P.R. 1915, Cr.=16 Cr. L.J. 555=29 Ind. Cas. 827=33 P.W.R. 1915, Cr.; supplementary paper book, relevancy of, when subject-matter printed lies outside scope of S. 20, 19 P.R. 1915, Cr.=21 P.W.R. 1915, Cr.=16 Cr. L.J. 274=28 Ind. Cas. 922.

in such newspaper which are alleged to be of the nature described in section 4, sub-section (1).

21. Every High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon, and, until such rules are framed, the practice of such Court in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.

(a) 22. Every declaration of forfeiture **(b)** purporting to be made under this Act shall, as against all persons, be conclusive evidence that the forfeiture therein referred to has taken place, and no proceeding **(c)** purporting to be taken under this Act shall be called in question by any Court, except the High Court, on such application as aforesaid, and no civil or criminal proceeding, except as provided by this Act, shall be instituted against any person for anything done or in good faith intended to be done under this Act.

23. (1) **(d)** Whoever keeps in his possession a press for the printing of books or papers without making a deposit under section 3 or section 5, when required so to do, shall on conviction by a Magistrate be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by section 4 of the Press

XXV of 1867. and Registration of Books Act, 1867.

(2) Whoever publishes any newspaper without making a deposit under section 8 or section 10, when required so to do, or publishes such newspaper knowing that such security has not been deposited, shall, on conviction by a Magistrate, be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by section 5 of XXV of 1867. the Press and Registration of Books Act, 1867.

24. Where any person has deposited any security under this Act and ceases to keep the press in respect of which such security was deposited, or, being a publisher, makes a declaration under section 8 of the Press and Registration of Books Act, 1867, he may apply to the Magistrate within whose jurisdiction such press is situate for the return of the said security; and thereupon such security shall, upon proof to the satisfaction of the Magistrate and subject to the provisions hereinbefore contained, be returned to such person.

Case-law :—(a) Scope, 39 M. 1085. (b) *Re* order of forfeiture, S. 22 read with Ss. 17 and 19, *supra*, debars Court from interfering except on the grounds that extracts in question are not of the nature described in the sub-section to S. 4, 39 M. 1085=5 L.W. 1=(1916) 2 M.W.N. 385. (c) Meaning of, 39 M. 1085=(1916) 2 M. W.N. 497=4 L.W. 625=32 M.L.J. 151; power of Court to issue *certiorari* when issued, *ibid.* (d) Cl. 1 of S. 23 only covered disobedience of order under S. 3 or 5, *supra*, 16 Bom. L.R. 87=2 Bom. Cr. Cas. 186=15 Cr.L.J. 297=23 Ind. Cas. 505.

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- 25.** Every notice under this Act shall be sent to a Magistrate, who shall cause it to be served in the manner provided for the service of summonses under the Code of Criminal Procedure, 1898. V of 1898.
- 26.** Nothing herein contained shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act.

**THE PRESS AND REGISTRATION OF BOOKS
ACT, 1867.**

(ACT XXV OF 1867.)

[Passed on the 22nd March, 1867.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1835	XI	Printing Presses ...	Rep., Act XXV of 1867.
1857	XV	Do. ...	" Act VIII of 1868.
1867	XXV	Press and Registration of Books.	Rep. in pt., Act XIV of 1870.
			Rep. in pt., & Am., Act X of 1890.
			" " " Act XII of 1891.
			Rep. in pt., Act III of 1914.
			" " & Am., Act X of 1914.
			Am., Act XI of 1915.

An Act for the regulation of Printing-presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books.

WHEREAS it is expedient to provide for the regulation of printing-presses and of periodicals containing news, for the preservation of copies of every book printed or lithographed in British India, and for the registration of such books; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

- Interpretation-clause.** 1. In this Act, unless there shall be something repugnant in the subject or context,—
- "book" includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed;
- "British India" means the territories which are or shall be vested in Her Majesty or Her Successors by the Statute 21 & 22 Vict., Cap. 106 (*An Act for the better government of India*) [1] * * *

Leg. Changes:—[1] Repealed by Act XII of 1891.

Case-law:—(a) Scope and nature of Act, 2 Ind. Cas. 193 (196)=32 M. 338=5 M. L.J. 415=9 Cr. L.J. 506; 9 M. 387=1 Weir 576.

"Magistrate." "Magistrate" means any person exercising the full powers of a Magistrate, and includes a Magistrate of police [1] * * *

[2] * * *

And in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorized by law to administer executive Government in such part, and includes a Chief Commissioner.

2. [Repeal of Act XI of 1835.] Rep. by Act XIV of 1870.

PART II.

OF PRINTING-PRESSES AND NEWSPAPERS.

Particulars to be printed on books and papers. 3.(a) Every book or paper printed within British India shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published) the name of the publisher and the place of publication.

4. No person shall, within British India, keep in his possession any press for the printing of books or papers, who shall not have made and subscribed the following declaration before the Magistrate within whose local jurisdiction such press may be:

"I, A. B., declare that I have a press for printing at——."

And this last blank shall be filled up with a true and precise description of the place where such press may be situate.

Rules as to publication of printed periodicals containing public news(c). 5. No printed periodical work, containing public news or comments on public news, shall be published in British India, except in conformity with the rules hereinafter laid down:

(1) The printer and the publisher of every such periodical work shall appear before the Magistrate within whose local jurisdiction such work shall be published, and shall make and subscribe, in duplicate, the following declaration (d):—

"I, A. B., declare that I am the printer [or publisher, or printer and publisher] of the periodical work entitled——and printed [or published, or printed and published, as the case may be] at——."

Leg Changes:—[1] Repealed by Act X of 1890. [2] Paras re number and gender, repealed by Act X of 1914.

Case-law:—(a) Analysis of section, 2 Ind. Cas. 978=5 P.R. 1909, Cr.=15 P.W.R. 1909=10 Cr. L.J. 195; application of section, A.W.N. (1887) 95; correct interpretation of rule in section, 2 Ind. Cas. 978=5 P.R. 1909, Cr.=15 P.W.R. 1909=10 Cr. L.J. 195; scope and intention of section, 16 M. 443=3 M.L.J. 201=1 Weir 802; printer of a portion of book even should have the imprint of his name, 14 Bom. L.R. 40=13 Ind. Cas. 827=13 Cr. L.J. 139=1 Bom. Cr. Cas. 70; names of printer and publisher, not printed as such, 5 P.R. 1909, Cr.=15 P.W.R. 1909=10 Cr. L.J. 195=2 Ind. Cas. 978; "publisher," meaning of, 23 C. 414; A.W.N (1887) 95. (b) No new declaration, when place of printing-press is changed, 9 P.R. 1889, Cr.; offence of keeping printing-press without making required declaration, 9 P.R. 1889, Cr.; effect of, 12 Bom. L.R. 675; 16 Bom. L.R. 87=2 Bom. Cr. Cas. 186=15 Cr. L.J. 297=23 Ind. Cas. 505; publication of seditious book when the declarant takes no part in management of press, 12 B.L.R. 675. (c) Scope of section, 16 M. 443=3 M.L.J. 201=1 Weir 802; liability of printer and publisher when there is defamation by newspaper, 9 M. 387=1 Weir 576, see also, 22 B. 152; 2 Ind. Cas. 193; 35 C. 945; see 14 P.R. 1913, Cr.=18 Ind. Cas. 347=14 Cr. L.J. 59=37 P.L.R. 1913=6 P.W.R. 1913, Cr. (d) See 16 Bom. L.R. 87.

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And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted :

(2) As often as the place of printing or publication is changed, a new declaration shall be necessary :

(3) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave British India, a new declaration from a printer or publisher resident within the said territories shall be necessary.

6. Each of the two originals of every declaration so made and

Authentication of
declaration.

subscribed as is aforesaid, shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made.

One of the said originals shall be deposited among the records of the

Deposit.

office of the Magistrate, and the other shall be deposited among the records of the High Court of Judicature,

or other principal Civil Court of original jurisdiction for the place where the said declaration shall have been made.

The officer in charge of each original shall allow any person to

Inspection and
supply of copies

inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said declaration, attested by the seal of the Court which has the custody of the original, on payment of a fee of two rupees.

7. In any legal proceeding whatever, as well civil as criminal (a),

Office copy of
declaration to be
prima facie evidence.

the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, shall be held (unless the contrary be proved) (b)

to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every periodical work whereof the title shall correspond with the title of the periodical work mentioned in the declaration (c).

8. Provided always that any person who may

New declaration
by persons who have
signed declaration
and subsequently
ceased to be printers
or publishers.

have subscribed any such declaration as is aforesaid, and who may subsequently cease to be the printer or publisher of the periodical work mentioned in such declaration, may appear before any Magistrate, and make and subscribe in duplicate the following declaration :—

" I, A. B., declare that I have ceased to be the printer [or publisher, or printer and publisher] of the periodical work entitled——."

Case-law :—(a) Section applicable to what proceedings, 35 C. 945; liability of printer or publisher for seditious matter appearing in newspaper, 35 C. 945=8 Cr. L.J. 498; [R. 32 M. 9]. (b) Want of knowledge or intention or absence not a good defence, for printer for publication of seditious matter, 69 P.L.R. 1905=1 P.R. 1905, Cr.=2 Cr. L.J. 81 [32 B. 112, D.]. 38 C. 227=10 Ind. Cas. 954=12 Cr. L.J. 354; liability of printer on declaration by printer, 2 M.L.T. 500=7 C.L.J. 49=7 Cr. L.J. 10=35 C. 141. (c) Effect of declaration made under section as printer, 2 Ind. Cas. 198=5 M.L.T. 415=32 M. 388=9 Cr. L.J. 505; 9 M. 387.

Authentication and filing. Each original of the latter declaration shall be authenticated by the signature and seal of the Magistrate before whom the said latter declaration shall have been made, and one original of the said latter declaration shall be filed along with each original of the former declaration.

Inspection and supply of copies. The officer in charge of each original of the latter declaration shall allow any person applying to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said latter declaration, attested by the seal of the Court having custody of the original, on payment of a fee of two rupees.

Putting copy in evidence. In all trials in which a copy, attested as is aforesaid, of the former declaration shall have been put in evidence, it shall be lawful to put in evidence a copy, attested as is aforesaid, of the latter declaration, and the former declaration shall not be taken to be evidence that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the periodical work therein mentioned.

PART III.

DELIVERY OF BOOKS.

9. Printed or lithographed copies of the whole of every book which shall be printed or lithographed in British India after this Act shall come into force, together with all maps, prints or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same, shall, notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered by the printer at such place and to such officer as the Local Government shall, by notification in the official Gazette, from time to time direct, and free of expense to the Government, as follows, that is to say :—

Copies of books printed after commencement of Act to be delivered gratis to Government:

- (a) in any case, within one calendar month after the day on which any such book shall first be delivered out of the press, one such copy, and
- (b) if within one calendar year from such day the Local Government shall require the printer to deliver other such copies not exceeding two in number, then within one calendar month after the day on which any such requisition shall be made by the Local Government on the printer, another such copy, or two other such copies, as the Local Government may direct,

the copies so delivered being bound, sewed or stitched together and upon the best paper on which any copies of the book shall be printed or lithographed.

The publisher or other person employing the printer shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints and engravings finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid.

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Nothing in the former part of this section shall apply to—

(i) any second or subsequent edition of a book in which edition no additions or alterations either in the letter-press or in the maps, book prints or other engravings belonging to the book have been made, and a copy of the first or some preceding edition of which book has been delivered under this Act, or

(ii) any periodical work published in conformity with the rules laid down in section 5 of this Act.

Receipt for copies delivered under section 9.

10. The officer to whom a copy of a book is delivered under the last foregoing section shall give to the printer a receipt in writing therefor.

11. The copy delivered pursuant to clause (a) of the first paragraph of section 9 of this Act shall be disposed of as the Local Government shall from time to time determine. Any copy or copies delivered pursuant to clause (b) of the said paragraph shall be transmitted to the British

Disposal of copies delivered under section 9.

Museum or the Secretary of State for India, or to the British Museum and the said Secretary of State, as the case may be.

PART IV.

PENALTIES.

12. Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

Penalty for printing contrary to rule in section 3 (a).

13. Whoever shall keep in his possession any such press as aforesaid, without making such a declaration as is required by section 4 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

Penalty for keeping press without making declaration required by section 4.

14. Any person who shall, in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, and imprisonment for a term not exceeding two years.

Punishment for making false statement.

15. Whoever shall print or publish any such periodical work as is hereinbefore described without conforming to the rules hereinbefore laid down, or whoever shall print or publish, or shall cause to be printed or published, any such periodical work, knowing that the said rules have not been observed with respect to that work,

Penalty for printing or publishing periodicals without conforming to rules.

Case-law :—(a) Scope of section, 16 M. 443—3 M.L.J. 201—1 Weir 862; 23 C. 414; publisher, who is a, A.W.N. (1887) 95; revisional powers of High Court. A.W.N. (1887) 95; omission to comply with S. 3 punishable, 5 P.R. 1909, Cr.—15 P.W.R. 1909—10 Cr. L.J. 195—2 Ind. Cas. 978.

shall, on conviction before a Magistrate, be punished with fine not exceeding five thousand rupees, or imprisonment for a term not exceeding two years, or both.

16. If any printer of any such book as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that section, he shall for every such default forfeit to the Government such sum not exceeding fifty rupees as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered or of any person authorized by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the copies which the printer ought to have delivered.

If any publisher or other person employing any such printer shall neglect to supply him, in the manner prescribed in the second paragraph of section 9 of this Act, with the maps, prints or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall for every such default forfeit to the Government such sum not exceeding fifty rupees as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the maps, prints or engravings which such publisher or other person ought to have supplied.

17. Any sum forfeited to the Government under the last foregoing section may be recovered, under the warrant of the Magistrate determining the sum, or of his successor in office, in the manner authorised by the Code of Criminal Procedure for the time being in force, and within the period prescribed by the Indian Penal Code, for the levy of a fine.

All fines or forfeitures under this Part of this Act shall, when recovered, be disposed of as the Local Government shall from time to time direct.

PART V.

REGISTRATION OF BOOKS.

18. There shall be kept at such office, and by such officer as the Local Government shall appoint in this behalf, a book to be called a ^(a) Catalogue of Books printed in British India, wherein shall be registered a memorandum of every book which shall have been delivered pursuant to clause (a) of the first paragraph of section 9 of this Act. Such memorandum shall (so far as may be practicable) contain the following particulars (that is to say):—

- (1) the title of the book and the contents of the title-page, with a translation into English of such title and contents, when the same are not in the English language :

Case-law:—(a) Expunging of entry in catalogue of books kept in Bombay, 9 C.W. N. 591—1 Cr. L. J. 278.

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- (2) the language in which the book is written :
- (3) the name of the author, translator or editor of the book or any part thereof :
- (4) the subject :
- (5) the place of printing and the place of publication :
- (6) the name or firm of the printer and the name or firm of the publisher :
- (7) the date of issue from the press or of the publication :
- (8) the number of sheets, leaves or pages :
- (9) the size :
- (10) the first, second or other number of the edition :
- (11) the number of copies of which the edition consists :
- (12) whether the book is printed or lithographed :
- (13) the price at which the book is sold to the public : and
- (14) the name and residence of the proprietor of the copyright or of any portion of such copyright.

Such memorandum shall be made and registered in the case of each book as soon as practicable after the delivery of the copy thereof pursuant to clause (a) of the first paragraph of section 9.

Effect of registration.

[1]

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19. The memoranda registered during each quarter in the said Catalogue shall be published in the local Gazette as soon as may be after the end of such quarter, and a copy of the memoranda so published shall be sent to the said Secretary of State, and to the [2] Government of India, [3] respectively.

Publication of memoranda registered.

PART VI.

MISCELLANEOUS.

20. The Local Government shall have power to make such rules as may be necessary or desirable for carrying out the objects of this Act, and from time to time to repeal, alter and add to such rules.

Power to make rules.

All such rules, and all repeals and alterations thereof, and additions thereto, shall be published in the local Gazette.

Publication.

Power to exclude any class of books from operation of Act.

21. The Governor General of India in Council may, by notification in the Gazette of India, exclude any class of books [3] or papers [3] from the operation of the whole or any part or parts of this Act.

22. [Continuance of parts of Act.] Rep. by Act X of 1890, S. 7.

23. [Commencement.] Rep. by Act XIV of 1870.

Leg. Changes:—[1] Repealed by Act III of 1914. [2] Substituted by Act X of 1914. [3] Inserted by Act XI of 1915.

THE PREVENTION OF CRUELTY TO ANIMALS ACT, 1890.

(ACT XI OF 1890.)

[Passed on the 21st March, 1890.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1890	XI	Prevention of Cruelty to Animals.	Am., Act XIV of 1917.

An Act for the Prevention of Cruelty to Animals.

WHEREAS it is expedient to make further provision for the prevention of cruelty to animals ; It is hereby enacted as follows :—

Title, extent and commencement, and supersession of other enactments.

1. (1) This Act may be called the Prevention of Cruelty to Animals Act, 1890.

(2) This section extends to the whole of British India : and the Local Government may, by notification in the official Gazette, extend, on and from a date to be specified in the notification, the whole or any part of the rest of this Act to any such local area as it thinks fit.

(3) When any part of this Act has been extended under sub-section (2) to a local area, the Local Government may, by notification in the official Gazette, direct that the whole or any part of any other enactment in force in the local area for the prevention of cruelty to animals^(a) shall, except as regards anything done or any offence committed or any fine or penalty incurred or any proceedings commenced, cease to have effect in the local area, and such whole or part shall cease to have effect accordingly until the Local Government, by like notification, otherwise directs.

(4) The Local Government may cancel or vary a notification under sub-section (2) or sub-section (3).

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) " animal " ^(b) means any domestic or captured animal : and

(2) " street " includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, to which the public have access.

Case-law :—(a) Reason for passing of Act, 4 Bom. L.R. 290 (298)—26 B. 609.
(b) To what animal, Act applies, 1 C.W.N. 642 (648)—24 C. 881 ; crab an animal, 1 C.W.N. 640.

S. 5-B ACT XI OF 1890 (PRE. OF CRU. TO ANI.). Prev'n. of Cruelty

Penalty for cruelty to animals in public places and for sale in such places of animals killed with unnecessary cruelty.

3.(a) If any person in any street or in any other place, whether open or closed, to which the public have access, or within sight of any person in any street or in any such other place,—

- (a)(b) cruelly and unnecessarily beats, overdrives, overloads or otherwise ill-treats any animal, or
- (b)(c) binds or carries any animal in such a manner or position as to subject the animal to unnecessary pain or suffering, or
- (c)(d) offers, exposes or has in his possession for sale any live animal which is suffering pain by reason of mutilation, starvation or other ill-treatment, or any dead animal which he has reason to believe to have been killed in an unnecessarily cruel manner.

he shall be punished with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

4. If any person performs upon any cow the operation called phuka, he shall be punished with fine which may extend to one hundred rupees, or with imprisonment which may extend to three months, or with both.

Penalty for killing animals with unnecessary cruelty anywhere(f).

5. If any person kills any animal in an unnecessarily cruel manner, he shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

Penalty for being in possession of the skin of a goat killed with unnecessary cruelty,

[1] 5-A. If any person has in his possession the skin of a goat, and has reason to believe that the goat has been killed in an unnecessarily cruel manner, he shall be punished with fine which may extend to one hundred rupees, or with imprisonment which may extend to three months, or with both, and the skin shall be confiscated.

[1] 5-B. If any person is charged with the offence of killing a goat contrary to the provisions of section 5, or with an offence punishable under section 5-A, and it is proved that such person had in his possession, at the time the offence was alleged to have been committed, the skin

Leg. Changes :—[1] Inserted by Act XIV of 1917.

Case-law :—(a) Nature of section, 4 Bom. L.R. 290 (293)=26 B. 609; whether offence must be committed within the sight of any person, 17 C.W.N. 332=18 Ind. Cas. 884=14 Cr. L.J. 192. (b) Source of clause (a), 4 Bom. L.R. 290 (293)=26 B. 609; individual actually ill-treating an animal liable, 4 Bom. L.R. 290 (294); ill-treatment, if includes starvation, 2 O.L.J. 624=3 Cr. L.J. 116; 17 C.W.N. 332. (c) Source of clause (b), 4 Bom. L.R. 290 (294)=26 B. 609; intention of the legislature, 19 Bom. L.R. 524=4 Bom. Cr. Cas. 108=41 B. 654; liability of Railway Company for cruelty to animals by its servants, 26 B. 609=4 Bom. L.R. 290. (d) Aim of clause (c), 26 B. 609=4 Bom. L.R. 290; pulling off a living crab, 24 O. 881=1 C.W.N. 640 (641); starving calf to death, 2 O.L.J. 624=3 Cr. L.J. 116. (e) Aim of Ss. 4 and 5, 26 B. 609=4 Bom. L.R. 290. (f) See 31 P.L.R. 1905=2 Cr. L.J. 187.

of a goat with any part of the skin of the head attached thereto, it shall be presumed, until the contrary be proved, that such goat was killed in an unnecessarily cruel manner, and that the person in possession of such skin had reason so to believe.

6. (1) If any person employs in any work or labour any animal which by reason of any disease, infirmity, wound, sore or other cause is unfit to be so employed, or permits (b) any such unfit animal in his possession or under his control to be so employed, he shall be punished with fine which may extend to one hundred rupees.

Penalty for employing anywhere animals unfit for labour(a).

(2) The Local Government may, by general or special order, appoint places to be infirmaries for the treatment and care of animals in respect of which offences against sub-section (1) have been committed.

(3) The Magistrate before whom a prosecution for such an offence has been instituted may direct that the animal in respect of which the offence is alleged or proved to have been committed shall be sent for treatment and care to an infirmary and be there detained until it is, in his opinion, or in the opinion of some other Magistrate again fit for the work or labour on which it has been ordinarily employed.

(4) The cost of the treatment, feeding and watering of the animal in the infirmary shall be payable by the owner of the animal according to such scale of rates as the District Magistrate or, in the case of an infirmary in a Presidency-town, the Commissioner of Police may from time to time prescribe.

(5) If the owner refuses or neglects to pay such cost and to remove the animal within such time as a Magistrate may prescribe, the Magistrate may direct that the animal be sold and that the proceeds of the sale be applied to the payment of such cost.

(6) The surplus, if any, of the proceeds of the sale shall, on application made by the owner within two months after the date of the sale, be paid to him, but the owner shall not be liable to make any payment in excess of the proceeds of the sale.

7. If any person wilfully permits any animal of which he is the owner to go at large in any street while the animal is affected with contagious or infectious disease, or without reasonable excuse permits any diseased or disabled animal of which he is the owner to die in any street, he shall be punished with fine which may extend to one hundred rupees.

Penalty for permitting diseased animals to go at large or to die in public places.

[1] 7-A. If a police officer, not below the rank of sub-inspector, has reason to believe that an offence, under section 5, in respect of a goat, is being or is about to be, or has been, committed in any place or that any person has in his possession the skin of a goat with any part of the skin of the head attached thereto, he may enter

Special power of search and seizure in respect of certain offences.

Leg. Changes:—[1] Inserted by Act XIV of 1917.

Case-law:—(a) Conviction after summary trial, 2 Cr. L.J. 187 = 81 P.L.R. 1905; charge against both coachman and owner whether illegal, 15 Cr. L.J. 695 = 26 Ind. Cas. 143. (b) Meaning of, 20 A 186 = A.W.N. (1898) 20 (9 A.L.J. 262 = 14 Ind. Cas. 658 = 13 Cr. L.J. 274, R.)

S. 1 ACT V OF 1910 (PREVENTION OF DOURINE). *Prevn. of Dourine*

and search such place or any place in which he has reason to believe any such skin to be, and may seize any such skin and any article or thing used or intended to be used in the commission of such offence.

8. (1) If a Magistrate of the first class, Sub-divisional Magistrate, Commissioner of Police or District Superintendent of Police, upon information in writing and after such inquiry as he thinks necessary, has reason to believe that an offence against section 4, section 5 or section 6 is being or is about to be or has been committed in any place, he may either himself enter and search or by his warrant authorise any police-officer above the rank of a constable to enter and search the place.

(2) The provisions of the Code of Criminal Procedure, 1882, X of 1882, relating to searches under that Code shall, so far as those provisions can be made applicable, apply to a search under sub-section (1) [1] or under section 7-A [1].

9. A prosecution for an offence against this Act shall not be instituted after the expiration of three months from the date of the commission of the offence.

10. When any Magistrate, Commissioner of Police or District Superintendent of Police has reason to believe that an offence against this Act has been committed in respect of any animal, he may direct the immediate destruction of the animal if in his opinion its sufferings are such as to render such a direction proper.

11. Nothing in this Act shall render it an offence to kill any animal in a manner required by the religion or religious rites and usages of any race, sect, tribe or class.

12. Notwithstanding anything in section 1, sections 9, 10 and 11 shall extend to every local area in which any section of this Act constituting an offence is for the time being in force.

THE PREVENTION OF DOURINE ACT, 1910.

(ACT V OF 1910.)

[Passed on the 25th February, 1910.]

An Act to provide for the prevention of the spread of Dourine.

WHEREAS it is expedient to provide for the prevention of the spread of dourine; It is hereby enacted as follows:—

Short title and extent. **1. (1)** This Act may be called the Dourine Act, 1910.

(2) This section extends to the whole of British India: the rest of this Act extends only to such areas as the Local Government may, by notification in the local official Gazette, direct.

Leg. Changes :—[1] Added by Act XIV of 1917.

Prevn. of Dourine ACT V OF 1910 (PREVENTION OF DOURINE). §. 2

2. (1) In this Act, the expressions "inspector" and "veterinary practitioner" mean, respectively, the officers appointed as such under this Act, acting within the local limits for which they are so appointed.

(2) The provisions of this Act in so far as they relate to entire horses shall, if the Local Government, by notification as aforesaid, so directs, apply also to entire asses used for mule-breeding purposes.

3. The Local Government may, by notification as aforesaid, make such orders as it thinks fit directing and regulating the registration of entire horses maintained for breeding purposes.

4. (1) The Local Government may, by notification as aforesaid, appoint any persons it thinks fit to be inspectors, and any qualified veterinary surgeons to be veterinary practitioners, under this Act, and to exercise and perform, within any area prescribed by the notification, the powers conferred and duties imposed by this Act upon such officers respectively.

(2) Every person so appointed shall be deemed to be a public servant XLV of 1860. within the meaning of the Indian Penal Code.

5. An inspector may, subject to such rules as the Local Government may make in this behalf,—

- (a) enter and search any building, field or other place for the purpose of ascertaining whether there is therein any horse which is affected with dourine; and
- (b) prohibit, by order in writing, the owner or keeper of any horse, which in his opinion is affected with dourine, from using such horse for breeding purposes, pending examination by the veterinary practitioner.

6. An inspector issuing an order under section 5, clause (b), shall forthwith forward a copy of such order to the veterinary practitioner.

7. A veterinary practitioner receiving a copy of an order forwarded under section 6 shall, as soon as possible after receipt of such copy, examine the horse mentioned therein, and may for such purpose enter any building, field or other place.

8. A veterinary practitioner may—

- (a) cancel any order issued under section 5, clause (b); or,
- (b) if on microscopical examination he finds that any horse is affected with dourine,—
 - (i) in the case of an entire horse, cause it to be castrated,
 - (ii) in the case of a mare, cause it to be branded in such manner as he may direct, or with the previous sanction of the Commissioner or such other officer as the Local Government may appoint in this behalf, cause it to be destroyed.

S. 14 ACT V OF 1910 (PREVENTION OF DOURINE). *Prevn. of Dourine*

9. When any horse is castrated or destroyed under section 8, the market-value of such horse immediately before it became affected with dourine shall be ascertained; and the Local Government shall pay as compensation to the owner thereof—

Compensation for horse destroyed, etc.

(a) in the case of a mare which has been destroyed, or of an entire horse which has died in consequence of castration, such market-value, and,

(b) in the case of an entire horse which survives castration, half the amount by which such value has been diminished owing to infection with dourine and castration.

10. (1) A veterinary practitioner may award, as compensation to be paid under section 9 in respect of each horse castrated or destroyed under section 8, a sum not exceeding two hundred and fifty rupees.

Settlement of compensation.

(2) If in the opinion of the veterinary practitioner the amount which should be paid as such compensation exceeds two hundred and fifty rupees, he shall report accordingly to the Collector, who shall decide the amount to be so paid.

11. (1) The Local Government shall, by rules published in the local official Gazette, make provision for the constitution of a committee or committees for the hearing of appeals from decisions under section 10.

Committees for hearing appeals.

(2) Such rules shall provide that not less than one member of any committee constituted thereunder shall be a person not in the employ of Government or of a local authority.

12. Any owner may, within two months from the date of a decision under section 10, appeal against such decision to the committee constituted in that behalf by rules made under section 11, and the decision of such committee shall be final.

Appeals.

13. (1) Whoever, being an inspector appointed under this Act, vexatiously and unnecessarily enters or searches any field, building or other place, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Vexatious entries and searches.

(2) No prosecution under this section shall be instituted after the expiry of three months from the date on which the offence has been committed.

14. (1) The Local Government may make rules for the purpose of carrying into effect the provisions of this Act.

Rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules as aforesaid may—

(a) regulate entries, searches and orders by inspectors under section 5;

(b) regulate the action to be taken by veterinary practitioners under section 8; and

(c) make provision for the payment of compensation to the owner of any mare branded under section 8.

Prevn. of Seditious ACT X OF 1911 (PREVN. OF SED. MEETINGS). 8. 1

(3) All such rules shall be published in the local official Gazette, and, on such publication, shall have effect as if enacted in this Act.

(4) In making any rule under this section the Local Government may direct that a breach of it shall be punishable with fine which may extend to fifty rupees.

Penalties. 15. Whoever uses or permits to be used for breeding purposes—

- (a) any horse which has not been registered in accordance with the requirements of a notification under section 3, or
- (b) any horse in respect of which an order under section 5, clause (b), is in force, or
- (c) any mare which has been branded in pursuance of section 8, clause (b),

shall be punishable with fine which may amount, in the case of a first conviction, to fifty rupees, or in the case of a second or subsequent conviction, to one hundred rupees.

Protection to persons acting under Act. 16. No suit, prosecution or other legal proceeding shall lie against any person for anything which is, in good faith, done or intended to be done under this Act.

THE PREVENTION OF SEDITIOUS MEETINGS ACT, 1911.

(ACT X OF 1911.)

[Passed on the 22nd March, 1911.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1907	VI	Prevention of Seditious Meetings ...	Rep., Act X of 1911.
1910	XVII	Continuing Act ...	Do. do.
1911	X	Prevention of Seditious Meetings.	

An Act to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition (a) or to cause a disturbance of public tranquillity.

WHEREAS it is expedient to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity ; It is hereby enacted as follows :—

Short title and extent. 1. (1) This Act may be called the Prevention of Seditious Meetings Act, 1911.

Case-law —(a) Using seditious language regarding Government..., established in India, 22 R. 112 (161).

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(2) It extends to the whole of British India, but shall have operation only in such Provinces or parts of Provinces as the Governor General in Council may from time to time notify in the Gazette of India.

Power of Local Government to notify proclaimed areas. 2. (1) The Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, declare the whole or any part of a Province, in which this Act is for the time being in operation, to be a proclaimed area.

(2) A notification made under sub-section (1) shall not remain in force for more than six months, but nothing in this sub-section shall be deemed to prevent the Local Government, with the previous sanction of the Governor General in Council, from making any further notifications in respect of the same area from time to time as it may think fit.

Definition. 3. (1) In this Act, the expression "public meeting" means a meeting which is open to the public or any class or portion of the public.

(2) A meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admission thereto may have been restricted by ticket or otherwise.

Notice to be given of public meetings. 4. (1) No public meeting for the furtherance or discussion of any subject likely to cause disturbance or public excitement, or for the exhibition or distribution of any writing or printed matter relating to any such subject, shall be held in any proclaimed area—

(a) unless written notice of the intention to hold such meeting and of the time and place of such meeting has been given to the District Magistrate or the Commissioner of Police, as the case may be, at least three days previously ; or

(b) unless permission to hold such meeting has been obtained in writing from the District Magistrate or the Commissioner of Police, as the case may be.

Power of Magistrate to cause report to be taken. (2) The District Magistrate or any Magistrate of the first class authorized by the District Magistrate in this behalf may, by order in writing, depute one or more Police-officers, not being below the rank of Head Constable, or other persons, to attend any such meeting for the purpose of causing a report to be taken of the proceedings.

Exception. (3) Nothing in this section shall apply to any public meeting held under any statutory or other express legal authority, or to public meetings convened by a Sheriff or to any public meetings or class of public meetings exempted for that purpose by the Local Government by general or special order.

Power to prohibit public meetings 5. The District Magistrate or the Commissioner of Police, as the case may be, may at any time, by order in writing, forbid which public notice shall forthwith be given, prohibit any public meeting in a proclaimed area if, in his opinion, such meeting is likely to promote sedition or disaffection (a) or to cause a disturbance of the public tranquillity.

Case-law :—(a) Meaning of, 22 B. 112 (134) : 19 O. 95 (44).

6. (1) Any person concerned in the promotion or conduct of a public meeting held in a proclaimed area contrary to the provisions of section 4 shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

Penalties.

(2) Any public meeting which has been prohibited under section 5 shall be deemed to be an unlawful assembly within the meaning of XLV of 1860, Chapter VIII of the Indian Penal Code and of Chapter IX of the Code of V of 1898. Criminal Procedure, 1898.

7. Whoever, in a proclaimed area, in a public place ^(a) or a place of public resort, otherwise than at a public meeting held in accordance with, or exempted from, the provisions of section 4, without the permission in writing of the Magistrate of the District or of the Commissioner of Police, as the case may be, previously obtained, delivers any lecture, address or speech on any subject likely to cause disturbance or public excitement to persons then present, may be arrested without warrant, and shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

Penalty for delivery of speeches in public places,

8. No Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class or Sub-divisional Magistrate shall try any offence against this Act.

Cognizance of offences.

VI of 1907.
XVII of 1910. **Repeals.**

9. The Prevention of Seditious Meetings Act, 1907, and the Continuing Act, 1910, are hereby repealed.

THE PRISONERS ACT, 1871.

(ACT V OF 1871.)

* * * *

15. Any warrant of commitment under Regulation III of 1818 of the Bengal Code (*for the confinement of State prisoners*), Regulation II of 1819 of the Madras Code (*for the confinement of State prisoners*), and Regulation XXV of 1827 of the Bombay Code (*for the confinement of State prisoners, and for the Attachment of the lands of Chieftains and others for reasons of State*), may be directed to the Superintendent in the same manner as the same might have been directed to the Sheriff under Act No. XXXIV of 1850 (*for the better custody of State prisoners*), and Act No. III of 1858 (*to amend the Law relating to the arrest and detention of State prisoners*).

Warrants under Regulations for confinement of State prisoners.

* * * *

THE PRISONERS ACT, 1900.

(ACT III OF 1900.)

[Passed on the 2nd February, 1900.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1869	XV	Prisoners' Testimony ...	Rep., Act III of 1900.
1871	V	Prisoners ...	Rep. (except S. 15), Act III of 1900.
1882	XI	Prisoners (Amendment) ...	Rep., Act III of 1900.
1900	III	Prisoners ...	Rep. in pt., Act VI of 1900. " " and Am., Act I of 1903. Am., Act IV of 1908. Rep. in pt., Act X of 1914.

An Act to consolidate the law relating to Prisoners confined by order of a Court.

WHEREAS it is expedient to consolidate the law relating to prisoners confined by order of a Court; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called the Prisoners Act, 1900.

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti; [1] *

[1] * * * *

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "Court" includes a Coroner and any officer lawfully exercising civil, criminal or revenue jurisdiction; and

(b) "prison" (a) includes any place which has been declared by the Local Government, by general or special order, to be a subsidiary jail.

PART II.

GENERAL.

Officers in charge of prisons to detain persons duly committed to their custody. 3. The officer in charge of a prison shall receive and detain all persons duly committed to his custody, under this Act or otherwise, by any Court, according to the exigency of any writ, warrant or order by which such person has been committed, or until such person is discharged or removed in due course of law.

Leg. Changes:—[1] Repealed by Act X of 1914.

Case-law:—(a) See 31 C. 1.

4. The officer in charge of a prison shall forthwith, after the execution of every such writ, order or warrant as aforesaid other than a warrant of commitment for trial, or after the discharge of the person committed thereby, return such writ, order or warrant to the Court by which the same was issued or made, together with a certificate, endorsed thereon and signed by him, showing how the same has been executed, or why the person committed thereby has been discharged from custody before the execution thereof.

Officers in charge of prisons to return writs, etc., after execution or discharge.

PART III.

PRISONERS IN THE PRESIDENCY-TOWNS.

5. Every writ or warrant for the arrest of any person issued by the High Court in the exercise of its ordinary, extraordinary or other criminal jurisdiction ^(a) shall be directed to and executed by a Police-officer ^(b) within the local limits of such jurisdiction.

Warrants, etc., to be directed to Police-officers.

Power for Local Governments to appoint Superintendents of Presidency prisons.

6. The Local Government ^(c) may appoint officers who shall have authority to receive and detain prisoners committed to their custody under this Part.

Explanation.—Any officer so appointed, by whatever designation he may be styled, is hereinafter referred to as “the Superintendent.”

7. Where any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to imprisonment or to death, the Court shall cause him to be delivered to the Superintendent together with its warrant, and such warrant shall be executed by the Superintendent and returned by him to the High Court when executed.

Delivery of persons sentenced to imprisonment or death by High Court.

8. Where any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to transportation or penal servitude, the Court shall cause him to be delivered for intermediate custody to the Superintendent, and the transportation or penal servitude of such person shall be deemed to commence from such delivery ^(d).

Delivery of persons sentenced to transportation or penal servitude by High Court.

9. Where any person is committed by the High Court, whether in execution of a decree or for contempt of Court or for any other cause ^(e), the Court shall cause him to be delivered to the Superintendent, together with its warrant of commitment.

Delivery of persons committed by High Court in execution of a decree or for contempt.

Case-law :—(a) Meaning of, 6 C.W.N. 254=29 O. 286. (b) Arrest by process serving peon illegal, 27 C. 457=4 C.W.N. 822. (c) Meaning of, see 6 C.W.N. 254. (d) See 29 C. 286=6 C.W.N. 254. (e) Section inapplicable to persons sentenced, 6 C.W.N. 254 ; Courts competent to commit for contempt, 26 M. 494.

10. Where any person is sentenced by a Presidency Magistrate to imprisonment, or is committed to prison for failure to find security to keep the peace or to be of good behaviour, the Magistrate shall cause him to be delivered to the Superintendent, together with his warrant.

Delivery of persons sentenced by Presidency Magistrates.

11. Every person committed by a Magistrate, Justice of the Peace, or Coroner (a) for trial by the High Court in the exercise of its original criminal jurisdiction shall be delivered to the Superintendent, together with a warrant of commitment, directing the Superintendent to produce such person before the Court for trial; and the Superintendent shall, as soon as practicable, cause such person to be taken before the Court at a criminal session thereof, together with the warrant of commitment, in order that he may be dealt with according to law.

Delivery of persons committed for trial by High Court.

12. The High Court may, pending the hearing, under section 350 of the Code of Civil Procedure, of any application for a XIV of 1882, declaration of insolvency, cause the judgment-debtor concerned to be delivered to the Superintendent, subject to the provisions as to release on security of section 349 of the said Code, and the Superintendent shall detain the said judgment-debtor in safe custody until he is re-delivered to an officer of the High Court for the purpose of being taken before it in pursuance of its order, or until he is released in due course of law.

Custody pending hearing by High Court under section 350 of the Code of Civil Procedure of application for insolvency.

13. (1) Every person arrested in pursuance of a writ, warrant or order of the High Court in the exercise of its original civil jurisdiction, or in pursuance of a warrant of any Civil Court established in a Presidency-town under any law or enactment for the time being in force, or in pursuance of a warrant issued under section 5, shall be brought without delay before the Court by which, or by a Judge of which, the writ, warrant or order was issued, awarded or made, or before a Judge thereof, if the said Court, or a Judge thereof, is then sitting for the exercise of original jurisdiction.

Delivery of persons arrested in pursuance of warrant of High Court or Civil Court in Presidency-town.

(2) If the said Court, or a Judge thereof, is not then sitting for the exercise of original jurisdiction, such person arrested as aforesaid shall, unless a Judge of the said Court otherwise directs, be delivered to the Superintendent for intermediate custody, and shall be brought before the said Court, or a Judge thereof, at the next sitting of the said Court, or of a Judge thereof, for the exercise of original jurisdiction in order that such person may be dealt with according to law; and the said Court or Judge shall have power to make or award all necessary orders or warrants for that purpose.

PART IV.

PRISONERS OUTSIDE THE PRESIDENCY-TOWNS.

References in this Part to prisons, etc., to be construed as referring also to Reformatory Schools.

14. In this Part all references to prisons or to imprisonment or confinement shall be construed as referring also to Reformatory Schools or to detention therein.

Case-law :—(a) Commitments by Coroner, 31 C. 1=7 C.W.N. 889; Presidency Magistrate's jurisdiction not ousted by Coroner's commitment, 31 C. 1=7 C.W.N. 889.

Power for officers in charge of prisons to give effect to sentences of certain Courts.

15. (1) Officers in charge of prisons outside the Presidency-towns may give effect to any sentence or order or warrant for the detention of any person passed or issued—

- (a) by any Court or tribunal acting, whether within or without British India, under the general or special authority of Her Majesty, or of the Governor General in Council, or of any Local Government, or
- (b) by any Court or tribunal in the territories of any Native Prince or State in India—
 - (i) if the presiding Judge, or, if the Court or tribunal consists of two or more Judges, at least one of the Judges, is an officer of the British Government authorized to sit as such Judge by the Native Prince or State or by the Governor General in Council, and
 - (ii) if the reception, detention or imprisonment in British India or in any province of British India of persons sentenced by any such Court or tribunal has been authorized by general or special order by the Governor General in Council or the Local Government, as the case may be, or
- (c) by any other Court or tribunal in the territories of any Native Prince or State in India, with the previous sanction of the Governor General in Council or of the Local Government in the case of each such sentence, order or warrant.

(2) Where a Court or tribunal of such a Native Prince or State has passed a sentence which cannot be executed without the concurrence of an officer of the British Government, and such sentence has been considered on the merits and confirmed by any such officer specially authorized in that behalf, such sentence, and any order or warrant issued in pursuance thereof, shall be deemed to be the sentence, order or warrant of a Court or tribunal acting under the authority of the Governor General in Council.

16. A warrant under the official signature of an officer of such Court or tribunal as is referred to in section 15 shall be sufficient authority for holding any person in confinement, or for sending any person for transportation, in pursuance of the sentence passed upon him.

Warrant of officer of such Court to be sufficient authority.

17. (1) Where an officer in charge of a prison doubts the legality of a warrant or order sent to him for execution under this Part, or the competency of the person whose official seal or signature is affixed thereto to pass the sentence and issue the warrant or order, he shall refer the matter to the Local Government, by whose order on the case he and all other public officers shall be guided as to the future disposal of the prisoner.

Procedure where officer in charge of prison doubts the legality of warrant sent to him for execution under this Part.

(2) Pending a reference made under sub-section (1), the prisoner shall be detained in such manner and with such restrictions or mitigations as may be specified in the warrant or order.

Execution in British India of certain capital sentences not ordinarily executable there.

18. (1) Where a British Court exercising, in or with respect to territory beyond the limits of British India, jurisdiction which the Governor General in Council has in such territory,—

- (a) has sentenced any person to death, and,
- (b) being of opinion that such sentence should, by reason of there being in such territory no secure place for the confinement of such person or no suitable appliances for his execution in a decent and humane manner, be executed in British India, has issued its warrant for the execution of such sentence to the officer in charge of a prison in British India,

such officer shall, on receipt of the warrant, cause the execution to be carried out at such place as may be prescribed therein in the same manner and subject to the same conditions in all respects as if it were a warrant duly issued under the provisions of section 381 of the Code of Criminal Procedure, 1898.

V of 1899;

(2) The prisons of which the officers in charge are to execute sentences under any such warrants as aforesaid shall be such as the Governor General in Council or a Local Government authorized by the Governor General in Council in this behalf may, by general or special order, direct.

(3) A Court shall be deemed to be a British Court for the purposes of this section if the presiding Judge, or, if the Court consist of two or more Judges, at least one of the Judges, is an officer of the British Government authorized to act as such Judge by any Native Prince or State in India or by the Governor General in Council :

Provided that every warrant issued under this sub-section by any such tribunal shall, if the tribunal consists of more than one Judge, be signed by a Judge who is an officer of the British Government authorized as aforesaid.

PART V.

PERSONS UNDER SENTENCE OF PENAL SERVITUDE.

19. (1) Every person under sentence of penal servitude may be confined in such prison within British India as the Governor General in Council, by general order, directs, and may, while so confined, be kept to hard labour and, until he can conveniently be removed to such prison, be imprisoned, with or without hard labour, and dealt with in all other respects as persons under sentence of rigorous imprisonment may, for the time being, by law be dealt with.

(2) The time of such intermediate imprisonment, and the time of removal from one prison to another, shall be taken and reckoned in discharge or part discharge of the term of the sentence.

Enactments respecting persons under sentence of transportation or imprisonment with hard labour applied to persons under sentence of penal servitude.

20. Every enactment now in force in British India with respect to persons under sentence of transportation, or under sentence of imprisonment with hard labour, shall, so far as is consistent with this Act, be construed to apply to persons under sentence of penal servitude.

21. (1) The Governor General in Council may grant to any person under sentence of penal servitude a license to be at large within British India or in such part thereof as is in such license expressed, during such portion of his term of penal servitude and upon such conditions as the Governor General in Council may think fit.

(2) The Governor General in Council may revoke or alter any license granted under sub-section (1).

22. So long as any license granted under section 21, sub-section (1), continues in force and unrevoked, the licensee shall not be liable to imprisonment or penal servitude by reason of his sentence, but shall be allowed to go and remain at large according to the terms of the license.

23. In case of the revocation of any such license as aforesaid, any Secretary to the Government of India may, by order in writing, signify to any Justice of the Peace or Magistrate that the license has been revoked, and require him to issue a warrant for the arrest of the licensee, and such Justice or Magistrate shall issue his warrant accordingly.

24. A warrant issued under section 23 may be executed by any officer to whom it is directed or delivered for that purpose in any part of British India, and shall have the same force in any place within British India as if it had been originally issued or subsequently endorsed by the Justice of the Peace or Magistrate or other authority having jurisdiction in the place where it is executed.

25. (1) When the licensee, for whose arrest a warrant has been issued under section 23, is arrested thereunder, he shall be brought, as soon as conveniently may be, before the Justice or Magistrate by whom the warrant was issued, or before some other Justice or Magistrate of the same place, or before a Justice or Magistrate having jurisdiction in the district in which the licensee has been arrested.

(2) Such Justice or Magistrate as aforesaid shall thereupon make out a warrant under his hand and seal for the recommitment of the licensee to the prison from which he was released under the license.

26. When a warrant has been issued under section 25, sub-section (2), the licensee shall be recommitteed accordingly, and shall thereupon be liable to be kept in penal servitude for such further term as, with the time during which he may have been imprisoned under the original sentence and the time during which he may have been at large under an unrevoked license, is equal to the term mentioned in the original sentence.

27. If a license is granted under section 21 upon any condition specified therein, and the licensee—

(a) violates any condition so specified, or

- (b) goes beyond the limits so specified, or
- (c) knowing of the revocation of the license, neglects forthwith to surrender himself, or conceals himself, or endeavours to avoid arrest,

he shall be liable upon conviction to be sentenced to penal servitude for a term not exceeding the full term of penal servitude mentioned in the original sentence.

PART VI.

REMOVAL OF PRISONERS.

References in this Part to prisons, etc., to be construed as referring also to Reformatory Schools.

28. In this Part, all references to prisons or to imprisonment or confinement shall be construed as referring also to Reformatory Schools or to detention therein.

Removal of prisoners.

[1] 29. (1) The Governor General in Council may, by general or special order, provide for the removal of any prisoner confined in a prison—

- (a) under sentence of death, or
- (b) under, or in lieu of, a sentence of imprisonment or transportation, or
- (c) in default of payment of a fine, or
- (d) in default of giving security for keeping the peace or for maintaining good behaviour,

to any other prison in British India.

(2) The Local Government and (subject to its orders and under its control) the Inspector-General of Prisons may, in like manner, provide for the removal of any prisoner confined as aforesaid in a prison in the Province to any other prison in the Province.

30. (1) Where it appears to the Local Government that any person detained or imprisoned under any order or sentence of any Court is of unsound mind, the Local Government may, by a warrant setting forth the grounds of belief that the person is of unsound mind, order his removal to a lunatic asylum or other place of safe custody within the Province, there to be kept and treated as the Local Government directs during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned, or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care or treatment, then until he is discharged according to law.

(2) Where it appears to the Local Government that the prisoner has become of sound mind, the Local Government shall, by a warrant directed to the person having charge of the prisoner, if still liable to be kept in custody, remand him to the prison from which he was removed, or to

Leg. Changes :—[1] This section was substituted for the original section by the Repealing and Amending Act, 1903 (I of 1903), S. 3.

another prison within the Province, or, if the prisoner is no longer liable to be kept in custody, order him to be discharged.

XXXVI of
1858.

(3) The provisions of section 9 of the Lunatic Asylums Act, 1858, shall apply to every person confined in a lunatic asylum under sub-section (1) after the expiration of the term for which he was ordered or sentenced to be detained or imprisoned; and the time during which a prisoner is confined in a lunatic asylum under that sub-section shall be reckoned as part of the term of detention or imprisonment which he may have been ordered or sentenced by the Court to undergo.

(4) In any case in which a Local Government is competent under sub-section (1) to order the removal of a prisoner to a lunatic asylum or other place of safe custody within the Province, the Governor General in Council may order his removal to any lunatic asylum or other place of safe custody in any part of British India; and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed by order of a Local Government shall, so far as they can be made applicable, apply to a prisoner removed by order of the Governor General in Council.

31. [*Removal of prisoners from territories under one Local Government to territories under another.*] Rep. by the Repealing and Amending Act, 1903 (I of 1903).

PART VII.

PERSONS UNDER SENTENCE OF TRANSPORTATION.

32. The Governor General in Council may appoint places within British India to which persons under sentence of transportation shall be sent; and the Local Government, or some officer duly authorized in this behalf by the Local Government, shall give orders for the removal of such persons to the places so appointed, except when sentence of transportation is passed on a person already undergoing transportation under a sentence previously passed for another offence.

Appointment of
places for confine-
ment of persons
under sentence of
transportation and
removal thereto.

PART VIII.

DISCHARGE OF PRISONERS.

24 & 25 Vict.,
c. 104. Release on recog-
nizance, by order of
High Court, of pri-
soner recommended
for pardon.

33. Any Court established under the Indian High Courts Act, 1861, may, in any case in which it has recommended to Her Majesty the granting of a free pardon to any prisoner, permit him to be at liberty on his own recognizance.

PART IX.

PROVISIONS FOR REQUIRING THE ATTENDANCE OF PRISONERS AND OBTAINING THEIR EVIDENCE.

Attendance of Prisoners in Court.

References in this
Part to prisons, etc.,
to be construed as
referring also to Re-
formatory Schools.

34. In this Part, all references to prisons or to imprisonment or confinement shall be construed as referring also to Reformatory Schools or to detention therein.

35. Subject to the provisions of section 39, any Civil Court may,

Power for Civil Courts to require appearance of prisoner to give evidence.

if it thinks that the evidence of any person confined in any prison within the local limits of its appellate jurisdiction, if it is a High Court, or, if it is not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter pending before it, make an order in the form set forth in the first schedule, directed to the officer in charge of the prison.

District Judge in certain cases to countersign orders made under section 35.

36. (1) Where an order under section 35 is made in any civil matter pending—

(a) in a Court subordinate to the District Judge, or

(b) in a Court of Small Causes outside a Presidency-town^(a),

it shall not be forwarded to the officer to whom it is directed, or acted upon by him, until it has been submitted to, and countersigned by,—

(i) the District Judge to which the Court is subordinate, or

(ii) the District Judge within the local limits of whose jurisdiction the Court of Small Causes is situate.

(2) Every order submitted to the District Judge under sub-section (1) shall be accompanied by a statement, under the hand of the Judge of the subordinate Court or Court of Small Causes, as the case may be, of the facts which in his opinion render the order necessary, and the District Judge may, after considering such statement, decline to countersign the order.

37. Subject to the provisions of section 39, any Criminal Court may, if it thinks that the evidence of any person

Power for certain Criminal Courts to require attendance of prisoner to give evidence or answer to charge.

confined in any prison within the local limits of its appellate jurisdiction, if it is a High Court, or, if it is not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter pending before it, or if a charge of an offence against such person is made or pending, make an order in the form set forth in the first or second schedule, as the case may be, directed to the officer in charge of the prison :

Provided that, if such Criminal Court is inferior to the Court of a Magistrate of the first class, the order shall be submitted to, and countersigned by, the District Magistrate to whose Court such Criminal Court is subordinate or within the local limits of whose jurisdiction such Criminal Court is situated.

Case-law :—(a) Power of Mofussil Small Cause Courts to require attendance of prisoners, see 5 B.L.R. 215 = 13 W.R. 278.

38. Where any person, for whose attendance an order as in this Part provided is made, is confined in any district

Order to be transmitted through Magistrate of the district or sub-division in which person is confined.

other than that in which the Court making or countersigning the order is situate, the order shall be sent by the Court by which it is made or countersigned to the District or Sub-divisional Magistrate within the local limits of whose jurisdiction the person is confined, and that Magistrate shall cause it to be delivered to the

officer in charge of the prison in which the person is confined.

39. (1) Where a person is confined in a prison within a Presidency-town, or in a prison more than one hundred miles distant from the place where any Court, subordinate to a

Procedure where removal is desired of person confined in Presidency-town or more than one hundred miles from place where evidence is required.

High Court, in which his evidence is required, is held, the Judge or presiding officer of the Court in which the evidence is so required, shall, if he thinks that such person should be removed under this Part for the purpose of giving evidence in such Court, and if the prison is within the local limits of the appellate juris-

diction of the High Court to which such Court is subordinate, apply in writing to the High Court, and the High Court may, if it thinks fit, make an order in the form set forth in the first schedule, directed to the officer in charge of the prison.

(2) The High Court making an order under sub-section (1) shall send it to the District or Sub-divisional Magistrate within the local limits of whose jurisdiction the person named therein is confined, or, in the case of a person confined in a prison within a Presidency-town, to the Commissioner of Police, and such Magistrate or Commissioner shall cause it to be delivered to the officer in charge of the prison in which the person is confined.

40. Where a person is confined in a prison beyond the local limits of the appellate jurisdiction of a High Court, any

Persons confined beyond limits of appellate jurisdiction of High Court.

Judge of such Court may, if he thinks that such person should be removed under this Part for the purpose of answering a charge of an offence or of giving evidence in any criminal matter in such Court or

in any Court subordinate thereto, apply in writing to the Local Government (a) of the territories within which the prison is situate, and the Local Government may, if it thinks fit, direct that the person be so removed, subject to such rules regulating the escort of prisoners as the Governor General in Council may prescribe.

41. Upon delivery of any order under this Part to the officer in charge of the prison in which the person named there-

Prisoner to be brought up,

in is confined, that officer shall cause him to be taken to the Court in which his attendance is required, so as

to be present in the Court at the time in such order mentioned, and shall cause him to be detained in custody in or near the Court until he has been examined or until the Judge or presiding officer of the Court authorizes him to be taken back to the prison in which he was confined.

Case-law :—(a) Kolhapur Durbar, not a Local Government, 7 Bom. L.R. 566—2 Cr. L.J. 504.

42. The Governor General in Council or the Local Government

Power to Government to exempt certain prisoners from operation of this Part.

may, by notification in the Gazette of India or the local official Gazette, as the case may be, direct that any person or any class of persons shall not be removed from the prison in which he or they may be confined; and thereupon, and so long as such notification remains in force, the provisions of this Part,

other than those contained in sections 44 to 46, shall not apply to such person or class of persons.

Officer in charge of prison when to abstain from carrying out orders.

43. In any of the following cases, that is to say,—

- (a) where the person named in any order made under section 35, section 37 or section 39 appears to be, from sickness or other infirmity, unfit to be removed, the officer in charge of the prison in which he is confined, shall apply to the District or Sub-divisional Magistrate within the local limits of whose jurisdiction the prison is situate, and if such Magistrate, by writing under his hand, declares himself to be of opinion that the person named in the order is, from sickness or other infirmity, unfit to be removed; or
- (b) where the person named in any such order is under committal for trial; or
- (c) where the person named in any such order is under a remand pending trial or pending a preliminary investigation; or
- (d) where the person named in any such order is in custody for a period which would expire before the expiration of the time required for removing him under this Part and for taking him back to the prison in which he is confined;

the officer in charge of the prison shall abstain from carrying out the order, and shall send to the Court from which the order has been issued, a statement of the reason for so abstaining:

Provided that such officer as aforesaid shall not so abstain where—

- (i) the order has been made under section 37; and
- (ii) the person named in the order is confined under committal for trial, or under a remand pending trial or pending a preliminary investigation, and does not appear to be, from sickness or other infirmity, unfit to be removed; and
- (iii) the place, where the evidence of the person named in the order is required, is not more than five miles distant from the prison in which he is confined.

Commissions for Examination of Prisoners.

Commissions for examination of prisoners.

44. In any of the following cases, that is to say,—

- (a) where it appears to any Civil Court that the evidence of a person confined in any prison within the local limits of the appellate jurisdiction of such Court, if it is a High Court, or,

if it is not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, who, for any of the causes mentioned in section 42 or section 43, cannot be removed, is material in any matter pending before it; or

(b) where it appears to any such Court as aforesaid that the evidence of a person confined in any prison so situate and more than ten miles distant from the place at which such Court is held, is material in any such matter; or

(c) where the District Judge declines, under section 36, to counter-sign an order for removal;

XIV of 1882. the Court may, if it thinks fit, issue a commission, under the provisions of the Code of Civil Procedure, for the examination of the person in the prison in which he is confined.

45. Where it appears to a High Court that the evidence of a person confined in a prison beyond the local limits of its

Commissions for examination of prisoners beyond limits of appellate jurisdiction of High Court.

XIV of 1882.

appellate jurisdiction is material in any civil matter pending before it or before any Court subordinate to it, the High Court may, if it thinks fit, issue a commission, under the provisions of the Code of Civil Procedure, for the examination of the person in the prison in which he is confined.

46. Every commission for the examination of a person issued under

Commission how to be directed.

section 44 or section 45 shall be directed to the District Judge within the local limits of whose jurisdiction the prison in which the person is confined is situate, and the District Judge shall commit the execution of the commission to the officer in charge of the prison, or to such other person as he may think fit.

Service of Process on Prisoners.

47. When any process directed to any person confined in any prison

Process how served on prisoners.

is issued from any Criminal or Revenue Court, it may be served by exhibiting to the officer in charge of the prison the original of the process and depositing with him a copy thereof.

48. (1) Every officer in charge of a prison upon whom service is

Process served to be transmitted at prisoner's request.

made under section 47 shall, as soon as may be, cause the copy of the process deposited with him to be shown and explained to the person to whom it is directed, and shall thereupon endorse upon the process and sign (a) a certificate to the effect that such person as aforesaid is confined in the prison under his charge and has been shown and had explained to him a copy of the process.

(2) Such certificate as aforesaid shall be *prima facie* evidence of the service of the process, and, if the person to whom the process is directed, requests that the copy shown and explained to him be sent to any other person and provides the cost of sending it by post, the officer in charge of the prison shall cause it to be so sent.

Case-law:—(a) Court to take judicial notice of jailer's signature, 4 B.L.R. O.C. 151.

Miscellaneous.

49. (1) For the purposes of this Part, the Courts of Small Causes established in the Presidency-towns and the Courts of Presidency Magistrates shall be deemed to be subordinate to the High Court of Judicature at Fort William, Madras or Bombay, as the case may be.

[1] * * * *

50. No order in any civil matter shall be made by a Court under any of the provisions of this Part until the amount of the costs and charges of the execution of such order (to be determined by the Court) is deposited in such Court:

Provided that, if upon any application for such order it appears to the Court to which the application is made, that the applicant has not sufficient means to meet the said costs and charges, the Court may pay the same out of any fund applicable to the contingent expenses of such Court, and every sum so expended may be recovered by the Government from any person ordered by the Court to pay the same, as if it were costs in a suit recoverable under the Code of Civil Procedure.

XIV of 1882.

51. (1) The Local Government, and in cases arising under section 40, the Governor General in Council, may make rules—

- (a) for regulating the escort of prisoners to and from Courts in which their attendance is required and for their custody during the period of such attendance;
- (b) for regulating the amount to be allowed for the costs and charges of such escort; and
- (c) for the guidance of officers in all other matters connected with the enforcement of this Part.

(2) All rules made under sub-section (1) shall be published in the local official Gazette or the Gazette of India, as the case may be, and shall, from the date of such publication, have the same force as if enacted by this Act.

Power to declare who shall be deemed officer in charge of prison.

52. The Local Government may declare what officer shall, for the purposes of this Part, be deemed to be the officer in charge of a prison.

53. [2]

THE FIRST SCHEDULE.

(See sections 35 and 37.)

Court of

To the officer in charge of the
prison).

(state name of

You are hereby required to produce _____, now a prisoner
in _____, under safe and sure conduct before the
Court of _____ at _____ on the _____ day of
_____ next by _____ of the clock in the forenoon of _____

Leg. Changes:—[1] Sub-sections (2) and (3) were repealed by the Lower Burma Courts Act VI of 1900, S. 48. [2] Repealed by Act X of 1914.

ACT IX OF 1894 (PRISONS).

(Countersigned) *C. D.*

(Countersigned) C. D.

[1] * * * * *

Year.	No. of Act.	Name of Act.	How affected.
[For earlier enactments, see Schedule to this Act.]			
1870	XXVI	Prisons	Rep., Act IX of 1894.
1894	IX	Prisons	Rep. in pt.. Act XIII of 1899. Am., Act XIII of 1910. „ Act X of 1914.

An Act to amend the law relating to Prisons.

WHEREAS it is expedient to amend the law relating to prisons in British India, and to provide rules for the regulation of such prisons; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Title, extent and commencement. 1. (1) This Act may be called the Prisons Act, 1894.

(2) It extends to the whole of British India, inclusive of [1] * * British Baluchistan, the Santhal Parganas and the Pargana of Spiti; and

(3) It shall come into force on the first day of July, 1894.

(4) Nothing in this Act shall apply to civil jails in the Presidency of Bombay outside the city of Bombay, and those jails shall continue to be administered under the provisions of sections 9 to 16 (both inclusive) of Bombay Act II of 1874, as amended by subsequent enactments.

2. (1) On and after the said first day of July, 1894, the enactments mentioned in the schedule shall be repealed to the extent specified in the fourth column thereof.

(2) But all rules and appointments made, directions given and orders issued under any of those enactments shall, so far as they are consistent with this Act, be deemed to have been respectively made, given and issued under this Act.

(3) Any enactment or document referring to any of those enactments shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

Definitions.

3. In this Act—

(1) "prison" (a) means any jail or place used permanently or temporarily under the general or special orders of a Local Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include—

(a) any place for the confinement of prisoners who are exclusively in the custody of the police;

(b) any place specially appointed by the Local Government under section 541 of the Code of Criminal Procedure, 1882; or

X of 1892.

(c) any place which has been declared by the Local Government, by general or special order, to be a subsidiary jail:

(2) "criminal prisoner" means any prisoner duly committed to custody under the writ, warrant or order of any Court or

Leg. Changes:—[1] The words "Upper Burma" were repealed by the Burma Laws Act, XLII of 1898.

Case-law:—(a) Havalat, a prison, 2 A. 301; see 1 Burma Select Judgments, 596; look up not a prison, L.B.R. (1872—1892) 596.

X of 1882.
V of 1871.

authority exercising criminal jurisdiction, or by order of a Court-martial :

- (3) " convicted criminal prisoner " means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of Chapter VIII of the Code of Criminal Procedure, 1882, or under the Prisoners Act, 1871 :
- (4) " civil prisoner " means any prisoner who is not a criminal prisoner :
- (5) " remission system " means the rules for the time being in force regulating the award of marks to, and the consequent shortening of sentences of, prisoners in jails :
- (6) " history-ticket " means the ticket exhibiting such information as is required in respect of each prisoner by this Act or the rules thereunder :
- (7) " Inspector General " means the Inspector General of Prisons :
- (8) " Medical Subordinate " means an Assistant Surgeon, Apothecary or qualified Hospital Assistant : and
- (9) " prohibited article " means an article the introduction or removal of which into or out of a prison is prohibited by any rule under this Act.

CHAPTER II.

MAINTENANCE AND OFFICERS OF PRISONS.

4. The Local Government shall provide, for the prisoners in the territories under such Government, accommodation in prisons constructed and regulated in such manner as to comply with the requisitions of this Act in respect of the separation of prisoners.

5. An Inspector General shall be appointed for the territories subject to each Local Government, and shall exercise, subject to the orders of the Local Government, the general control and superintendence of all prisons situated in the territories under such Government.

6. For every prison there shall be a Superintendent, a Medical Officer (who may also be the Superintendent), a Medical Subordinate, a Jailer and such other officers as the Local Government thinks necessary :

Provided that the Governor of Bombay in Council may, with the previous sanction of the Governor General in Council, declare by order in writing that in any prison specified in the order the office of Jailer shall be held by the person appointed to be Superintendent.

7. Whenever it appears to the Inspector General that the number of prisoners in any prison is greater than can conveniently or safely be kept therein, and it is not convenient to transfer the excess number to some other prison,

or whenever from the outbreak of epidemic disease within any prison, or for any other reason, it is desirable to provide for the temporary shelter and safe custody of any prisoners,

provision shall be made, by such officer and in such manner as the Local Government may direct, for the shelter and safe custody in temporary prisons of so many of the prisoners as cannot be conveniently or safely kept in the prison.

CHAPTER III.

DUTIES OF OFFICERS.

Generally.

8. All officers of a prison shall obey the directions of the Superintendent; all officers subordinate to the Jailer shall perform such duties as may be imposed on them by the Jailer with the sanction of the Superintendent or be prescribed by rules under section 60.

Control and duties of officers of prisons.

9. No officer of a prison shall sell or let, nor shall any person in trust for or employed by him sell or let, or derive any benefit from selling or letting, any article to any prisoner or have any money or other business dealings directly or indirectly with any prisoner.

Officers not to have business dealings with prisoners.

10. No officer of a prison shall, nor shall any person in trust for or employed by him, have any interest, direct or indirect, in any contract for the supply of the prison: nor shall he derive any benefit, directly or indirectly, from the sale or purchase of any article on behalf of the prison or belonging to a prisoner.

Officers not to be interested in prison contracts.

Superintendent.

11. (1) Subject to the orders of the Inspector General, the Superintendent shall manage the prison in all matters relating to discipline, labour, expenditure, punishment and control.

Superintendent(a).

(2) Subject to such general or special directions as may be given by the Local Government, the Superintendent of a prison other than a central prison or a prison situated in a presidency-town shall obey all orders not inconsistent with this Act or any rule thereunder which may be given respecting the prison by the District Magistrate, and shall report to the Inspector General all such orders and the action taken thereon.

12. The Superintendent shall keep, or cause to be kept, the following records:—

Records to be kept by Superintendent.

- (1) a register of prisoners admitted;
- (2) a book showing when each prisoner is to be released;
- (3) a punishment-book for the entry of the punishments inflicted on prisoners for prison-offences;

Case law:—(a) Power of Superintendent to convict watchman for aiding escape of prisoner, 4 N.W.P. 4.

- (4) a visitors' book for the entry of any observations made by the visitors touching any matters connected with the administration of the prison ;
- (5) a record of the money and other articles taken from prisoners ;
- and all such other records as may be prescribed by rules under section 59 or section 60.

Medical Officer.

13. Subject to the control of the Superintendent, the Medical Officer shall have charge of the sanitary administration of the prison, and shall perform such duties as may be prescribed by rules made by the Local Government under section 60.

14. Whenever the Medical Officer has reason to believe that the mind of a prisoner is, or is likely to be, injuriously affected by the discipline or treatment to which he is subjected, the Medical Officer shall report the case in writing to the Superintendent, together with such observations as he may think proper.

This report, with the orders of the Superintendent thereon, shall forthwith be sent to the Inspector General for information.

15. On the death of any prisoner, the Medical Officer shall forthwith record in a register the following particulars, so far as they can be ascertained, namely :—

- (1) the day on which the deceased first complained of illness or was observed to be ill,
- (2) the labour, if any, on which he was engaged on that day,
- (3) the scale of his diet on that day,
- (4) the day on which he was admitted to hospital,
- (5) the day on which the Medical Officer was first informed of the illness,
- (6) the nature of the disease,
- (7) when the deceased was last seen before his death by the Medical Officer or Medical Subordinate,
- (8) when the prisoner died, and
- (9) (in cases where a post-mortem examination is made) an account of the appearances after death,

together with any special remarks that appear to the Medical Officer to be required.

Jailer.

16. (1) The Jailer shall reside in the prison, unless the Superintendent permits him in writing to reside elsewhere.

(2) The Jailer shall not, without the Inspector General's sanction in writing, be concerned in any other employment.

Jailer to give notice of death of prisoner.

17. Upon the death of a prisoner, the Jailer shall give immediate notice thereof to the Superintendent and the Medical Subordinate.

Responsibility of Jailer.

18. The Jailer shall be responsible for the safe custody of the records to be kept under section 12, for the commitment warrants and all other documents confided to his care, and for the money and other articles taken from prisoners.

Jailer to be present at night.

19. The Jailer shall not be absent from the prison for a night without permission in writing from the Superintendent; but, if absent without leave for a night from unavoidable necessity, he shall immediately report the fact and the cause of it to the Superintendent.

Powers of Deputy and Assistant Jailers.

20. Where a Deputy Jailer or Assistant Jailer is appointed to a prison, he shall, subject to the orders of the Superintendent, be competent to perform any of the duties, and be subject to all the responsibilities, of a Jailer under this Act or any rule thereunder.

Subordinate Officers.

Duties of gate-keeper.

21. The officer acting as gate-keeper, or any other officer of the prison, may examine anything carried in or out of the prison, and may stop and search or cause to be searched any person suspected of bringing any prohibited article into or out of the prison or of carrying out any property belonging to the prison, and, if any such article or property be found, shall give immediate notice thereof to the Jailer.

Subordinate officers not to be absent without leave.

22. Officers subordinate to the Jailer shall not be absent from the prison without leave from the Superintendent or from the Jailer.

Convict officers.

23. Prisoners who have been appointed as officers of prisons shall be deemed to be public servants within the meaning of the Indian Penal Code.

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CHAPTER IV.

ADMISSION, REMOVAL AND DISCHARGE OF PRISONERS.

Prisoners to be examined on admission.

24. (1) Whenever a prisoner is admitted into prison, he shall be searched, and all weapons and prohibited articles shall be taken from him.

(2) Every criminal prisoner shall also, as soon as possible after admission, be examined under the general or special orders of the Medical Officer, who shall enter or cause to be entered in a book, to be kept by the Jailer, a record of the state of the prisoner's health, and of any wounds or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment, and any observations which the Medical Officer thinks fit to add.

(3) In the case of female prisoners the search and examination shall be carried out by the matron under the general or special orders of the Medical Officer.

25. All money or other articles in respect whereof no order of a competent Court has been made, and which may with proper authority be brought into the prison by any criminal prisoner or sent to the prison for his use, shall be placed in the custody of the Jailer.

26. (1) All prisoners, previously to being removed to any other prison, shall be examined by the Medical Officer.

(2) No prisoner shall be removed from one prison to another unless the Medical Officer certifies that the prisoner is free from any illness rendering him unfit for removal.

(3) No prisoner shall be discharged against his will from prison, if labouring under any acute or dangerous distemper, nor until, in the opinion of the Medical Officer, such discharge is safe.

CHAPTER V.

DISCIPLINE OF PRISONERS.

27. The requisitions of this Act with respect to the separation of prisoners are as follows:—

- (1) in a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with, the male prisoners;
- (2) in a prison where male prisoners under the age of eighteen are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not;
- (3) unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners; and
- (4) civil prisoners shall be kept apart from criminal prisoners.

28. Subject to the requirements of the last foregoing section, convicted criminal prisoners may be confined either in association or individually in cells or partly in one way and partly in the other.

29. No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison, and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical Officer or Medical Subordinate.

30. (1) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by order of, the Jailer, and all articles shall be taken from him which the Jailer deems it dangerous or inexpedient to leave in his possession.

(2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard.

CHAPTER VI.

FOOD, CLOTHING AND BEDDING OF CIVIL AND UNCONVICTED CRIMINAL PRISONERS.

31. A civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other necessaries, but subject to examination and to such rules as may be approved by the Inspector General.

Maintenance of certain prisoners from private sources.

32. No part of any food, clothing, bedding or other necessaries belonging to any civil or unconvicted criminal prisoner shall be given, hired or sold to any other prisoner; and any prisoner transgressing the provisions of this section shall lose the privilege of purchasing food or receiving it from private sources, for such time as the Superintendent thinks proper.

Restriction on transfer of food and clothing between certain prisoners.

33. (1) Every civil prisoner and unconvicted criminal prisoner unable to provide himself with sufficient clothing (*) and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.

Supply of clothing and bedding to civil and unconvicted criminal prisoners.

(2) When any civil prisoner has been committed to prison in execution of a decree in favour of a private person, such person, or his representative, shall, within forty-eight hours after the receipt by him of a demand in writing, pay to the Superintendent the cost of the clothing and bedding so supplied to the prisoner; and in default of such payment the prisoner may be released.

CHAPTER VII.

EMPLOYMENT OF PRISONERS.

34. (1) Civil prisoners may, with the Superintendent's permission, work and follow any trade or profession.

Employments of civil prisoners.

(2) Civil prisoners finding their own implements, and not maintained at the expense of the prison, shall be allowed to receive the whole of their earnings; but the earnings of such as are furnished with implements or are maintained at the expense of the prison shall be subject to a deduction, to be determined by the Superintendent, for the use of implements and the cost of maintenance.

35. (1) No criminal prisoner sentenced to labour or employed on labour at his own desire shall, except on an emergency with the sanction in writing of the Superintendent, be kept to labour for more than nine hours in any one day.

Employment of criminal prisoners.

Case-law :—(a) Cost of clothing, etc., payable under this section is not subsistence allowance, 6 L.B.R. 61=17 Ind. Cas. 911=5 Bur. L.T. 159.

(2) The Medical Officer shall from time to time examine the labouring prisoners while they are employed, and shall at least once in every fortnight cause to be recorded upon the history-ticket of each prisoner employed on labour the weight of such prisoner at the time.

(3) When the Medical Officer is of opinion that the health of any prisoner suffers from employment on any kind or class of labour, such prisoner shall not be employed on that labour but shall be placed on such other kind or class of labour as the Medical Officer may consider suited for him.

36. Provision shall be made by the Superintendent for the employment (as long as they so desire) of all criminal prisoners sentenced to simple imprisonment; but no prisoner not sentenced to rigorous imprisonment shall be punished for neglect of work excepting by such alteration in the scale of diet as may be established by the rules of the prison in the case of neglect of work by such a prisoner.

Employment of
criminal prisoners
sentenced to simple
imprisonment.

CHAPTER VIII.

HEALTH OF PRISONERS.

37. (1) The names of prisoners desiring to see the Medical Subordinate or appearing out of health in mind or body shall, without delay, be reported by the officer in immediate charge of such prisoners to the Jailer.

Sick prisoners.

(2) The Jailer shall, without delay, call the attention of the Medical Subordinate to any prisoner desiring to see him, or who is ill, or whose state of mind or body appears to require attention, and shall carry into effect all written directions given by the Medical Officer or Medical Subordinate respecting alterations of the discipline or treatment of any such prisoner.

38. All directions given by the Medical Officer or Medical Subordinate in relation to any prisoner, with the exception of orders for the supply of medicines or directions relating to such matters as are carried into effect by the Medical Officer himself or under his superintendence, shall be entered day by day in the prisoner's history-ticket or in such other record as the Local Government may by rule direct, and the Jailer shall make an entry in its proper place stating in respect of each direction the fact of its having been or not having been complied with, accompanied by such observations, if any, as the Jailer thinks fit to make, and the date of the entry.

Record of direc-
tions of Medical
Officers.

Hospital.

39. In every prison an hospital or proper place for the reception of sick prisoners shall be provided.

CHAPTER IX.

VISITS TO PRISONERS.

40. Due provision shall be made for the admission, at proper times and under proper restrictions, into every prison of persons with whom civil or unconvicted criminal prisoners may desire to communicate, care being taken that, so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other person.

Visits to civil and
unconvicted crimi-
nal prisoners.

41. (1) The Jailer may demand the name and address of any visitor to a prisoner, and, when the Jailer has any ground for suspicion, may search any visitor, or cause him to be searched, but the search shall not be made in the presence of any prisoner or of another visitor.

(2) In case of any such visitor refusing to permit himself to be searched, the Jailer may deny him admission; and the grounds of such proceeding, with the particulars thereof, shall be entered in such record as the Local Government may direct.

CHAPTER X.

OFFENCES IN RELATION TO PRISONS.

42. Whoever, contrary to any rule under section 60, introduces or removes, or attempts by any means whatever to introduce or remove, into or from any prison, or supplies or attempts to supply to any prisoner outside the limits of a prison, any prohibited article (a),

and every officer of a prison who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any prison, to be possessed by any prisoner, or to be supplied to any prisoner outside the limits of a prison,

and whoever, contrary to any such rule, communicates or attempts to communicate with any prisoner,

and whoever abets any offence made punishable by this section, shall, on conviction before a Magistrate, be liable to imprisonment (b) for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

43. When any person, in the presence of any officer of a prison, commits any offence specified in the last foregoing section, and refuses on demand of such officer to state his name and residence, or gives a name or residence which such officer knows, or has reason to believe, to be false, such officer may arrest him, and shall without unnecessary delay make him over to a Police-officer, and thereupon such Police-officer shall proceed as if the offence had been committed in his presence.

44. The Superintendent shall cause to be affixed, in a conspicuous place outside the prison, a notice in English and the Vernacular setting forth the acts prohibited under section 42 and the penalties incurred by their commission.

Case-law :—(a) Taking food to an under-trial prisoner, 2 A. 301; acquittal on previous charge and subsequent charge for different offence, 2 A. 301. (b) Imprisonment in default of fine, 14 P.R. 1895, Cr.; sentence of imprisonment commencing from date of imprisonment on which it was passed, 17 Cr. L.J. 480—86 Ind. Cas. 160; detention in civil prison whether amounts to imprisonment, *ibid*.

CHAPTER XI.

PRISON-OFFENCES.

Prison-offences. 45. The following acts are declared to be prison-offences (a) when committed by a prisoner :—

- (1) such wilful disobedience to any regulation of the prison as shall have been declared by rules made under section 59 to be a prison-offence ;
- (2) any assault or use of criminal force ;
- (3) the use of insulting or threatening language ;
- (4) immoral or indecent or disorderly behaviour ;
- (5) wilfully disabling himself from labour ;
- (6) contumaciously refusing to work ;
- (7) filing, cutting, altering or removing handcuffs, fetters or bars without due authority ;
- (8) wilful idleness or negligence at work by any prisoner sentenced to rigorous imprisonment ;
- (9) wilful mismanagement of work by any prisoner sentenced to rigorous imprisonment ;
- (10) wilful damage to prison-property ;
- (11) tampering with or defacing history-tickets, records or documents ;
- (12) receiving, possessing or transferring any prohibited article ;
- (13) feigning illness ;
- (14) wilfully bringing a false accusation against any officer or prisoner ;
- (15) omitting or refusing to report, as soon as it comes to his knowledge, the occurrence of any fire, any plot or conspiracy, any escape, attempt or preparation to escape, and any attack or preparation for attack upon any prisoner or prison-official ; and
- (16) (b) conspiring to escape, or to assist in escaping, or to commit any other of the offences aforesaid.

Punishment of such offences. 46. The Superintendent may examine any person touching any such offence, and determine thereupon and punish such offence by—

- (1) a formal warning :

Explanation.—A formal warning shall mean a warning personally addressed to a prisoner by the Superintendent and recorded in the punishment-book and on the prisoner's history-ticket :

- (2) change of labour to some more irksome or severe form ;
- (3) hard labour for a period not exceeding seven days in the case of convicted criminal prisoners not sentenced to rigorous imprisonment ;

Case-law :—(a) Separate sentences, U.B.R. (1899—1896), Vol. I, 298. (b) Attempt to escape by prisoner at work outside Jail, A.W.N (1894) 176.

- (4) such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rules made by the Governor General in Council ;
- (5) the substitution of gunny or other coarse fabric for clothing of other material, not being woollen, for a period which shall not exceed three months ;
- (6) imposition of handcuffs of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the Governor General in Council ;
- (7) imposition of fetters of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the Governor General in Council ;

- (8) separate confinement for any period not exceeding six months :

Explanation.—Separate confinement means such confinement with or without labour as secludes a prisoner from communication with, but not from sight of, other prisoners, and allows him not less than one hour's exercise per diem and to have his meals in association with one or more other prisoners ;

- (9) penal diet, that is, restriction of diet in such manner and subject to such conditions regarding labour as may be prescribed by the Local Government :

Provided that such restriction of diet shall in no case be applied to a prisoner for more than ninety-six consecutive hours, and shall not be repeated except for a fresh offence nor until after an interval of one week ;

- (10) cellular confinement for any period not exceeding fourteen days :

Provided that after each period of cellular confinement an interval of not less duration than such period must elapse before the prisoner is again sentenced to cellular or solitary confinement :

Explanation.—Cellular confinement means such confinement with or without labour as entirely secludes a prisoner from communication with, but not from sight of, other prisoners :

- (11) solitary confinement for any period not exceeding seven days :

Provided that after each period of solitary confinement an interval of not less duration than such period must elapse before the prisoner is again sentenced to solitary or cellular confinement ;

Explanation.—Solitary confinement means such confinement with or without labour as entirely secludes the prisoner both from sight of, and communication with, other prisoners :

- (12) penal diet as defined in clause (9) combined with solitary confinement as defined in clause (11) ;

- (13) whipping provided that the number of stripes shall not exceed thirty :

Provided that nothing in this section shall render any female or civil prisoner liable to the imposition of any form of handcuffs or fetters, or to whipping.

47. Any two of the punishments enumerated in the last foregoing section may be awarded for any such offence in combination, subject to the following exceptions, namely :—

Plurality of punishments under section 46.

- (1) formal warning shall not be combined with any other punishment except loss of privileges under clause (4) of that section ;
- (2) penal diet shall not be combined with change of labour under clause (2) of that section, nor shall any additional period of penal diet awarded singly be combined with any period of penal diet awarded in combination with solitary confinement ;
- (3) solitary confinement shall not be combined with cellular confinement or with separate confinement, nor cellular confinement with separate confinement, so as to prolong the total period of seclusion to which the prisoner shall be liable ;
- (4) whipping shall not be combined with any other form of punishment except cellular or separate confinement^[1] or loss of privileges admissible under the remission system.

48. (1) The Superintendent shall have power to award any of the punishments enumerated in the two last foregoing sections, subject, in the case of separate confinement for a period exceeding one month, to the previous confirmation of the Inspector General.

Award of punishments under sections 46 and 47.

(2) No officer subordinate to the Superintendent shall have power to award any punishment whatever.

49. Except by order of a Court of Justice, no punishment other than the punishments specified in the foregoing sections shall be inflicted on any prisoner, and no punishment shall be inflicted on any prisoner otherwise than in accordance with the provisions of those sections.

Punishments to be in accordance with foregoing sections.

50. (1) No punishment of penal diet, either singly or in combination, or of whipping, or of change of labour under section 46, clause (2), shall be executed until the prisoner to whom such punishment has been awarded has been examined by the Medical Officer, who, if he considers the prisoner fit to undergo the punishment, shall certify accordingly in the appropriate column of the punishment-book prescribed in section 12.

Medical Officer to certify to fitness of prisoner for punishment.

(2) If he considers the prisoner unfit to undergo the punishment, he shall in like manner record his opinion in writing and shall state whether the prisoner is absolutely unfit for punishment of the kind awarded, or whether he considers any modification necessary.

(3) In the latter case he shall state what extent of punishment he thinks the prisoner can undergo without injury to his health.

Leg. Changes :—[1] Substituted by Act X of 1914.

61. (1) In the punishment-book prescribed in section 12 there shall be recorded, in respect of every punishment inflicted, the prisoner's name, register number and the class (whether habitual or not) to which he belongs, the prison-offence of which he was guilty, the date on which such prison-offence was committed, the number of previous prison-offences recorded against the prisoner, and the date of his last prison-offence, the punishment awarded, and the date of infliction.

(2) In the case of every serious prison-offence, the names of the witnesses proving the offence shall be recorded, and, in the case of offences for which whipping is awarded, the Superintendent shall record the substance of the evidence of the witnesses, the defence of the prisoner, and the finding with the reasons therefor.

(3) Against the entries relating to each punishment the Jailer and Superintendent shall affix their initials as evidence of the correctness of the entries.

62. If any prisoner is guilty of any offence against prison-discipline which, by reason of his having frequently committed such offences or otherwise in the opinion of the Superintendent, is not adequately punishable by the infliction of any punishment which he has power under this Act to award, the Superintendent may forward such prisoner to the Court of the District Magistrate or of any Magistrate of the first class [1] or Presidency Magistrate [2] having jurisdiction, together with a statement of the circumstances, and such Magistrate shall thereupon inquire into and try the charge (a) so brought against the prisoner, and, upon conviction, may sentence him to imprisonment which may extend to one year, such term to be in addition to any term for which such prisoner was undergoing imprisonment when he committed such offence, or may sentence him to any of the punishments enumerated in section 46.

[2] Provided that any such case may be transferred for inquiry and trial by the District Magistrate to any Magistrate of the first class and by a Chief Presidency Magistrate to any other Presidency Magistrate: and

Provided also that no person shall be punished twice for the same offence.

53. (1) No punishment of whipping shall be inflicted in instalments, or except in the presence of the Superintendent and Medical Officer or Medical Subordinate.

(2) Whipping shall be inflicted with a light ratan not less than half an inch in diameter on the buttocks, and in case of prisoners under the age of sixteen it shall be inflicted, in the way of school discipline, with a lighter ratan.

Leg. Changes :—[1] Added by Act XIII of 1910. [2] Substituted by Act XIII of 1910.

Case-law :—(a) Separate sentences, U.R.R. (1892—1896), Vol. I, 299; procedure in case of trial of prison offences, A.W.N. (1900) 183; *held*, Presidency Magistrate had no jurisdiction to try offences under this section, 32 M. 309.

54. (1) Every Jailer or officer of a prison subordinate to him who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice in writing of his intention for the period of two months, or who shall wilfully overstay any leave granted to him, or who shall engage without authority in any employment other than his prison duty, or who shall be guilty of cowardice, shall be liable, on conviction before a Magistrate, to fine not exceeding two hundred rupees, or to imprisonment for a period not exceeding three months, or to both.

(2) No person shall under this section be punished twice for the same offence.

CHAPTER XII.

MISCELLANEOUS.

55. A prisoner, when being taken to or from any prison in which he may be lawfully confined or whenever he is working outside or is otherwise beyond the limits of any such prison in or under the lawful custody or control of a prison-officer belonging to such prison, shall be deemed to be in prison and shall be subject to all the same incidents as if he were actually in prison.

56. Whenever the Superintendent considers it necessary (with reference either to the state of the prison or the character of the prisoners) for the safe custody of any prisoners that they should be confined in irons, he may, subject to such rules and instructions as may be laid down by the Inspector General with the sanction of the Local Government, so confine them.

57. (1) Prisoners under sentence of transportation may, subject to any rules made under section 60, be confined in fetters for the first three months after admission to prison.

(2) Should the Superintendent consider it necessary, either for the safe custody of the prisoner himself or for any other reason, that fetters should be retained on any such prisoner for more than three months, he shall apply to the Inspector General for sanction to their retention for the period for which he considers their retention necessary, and the Inspector General may sanction such retention accordingly.

58. No prisoner shall be put in irons or under mechanical restraint by the Jailer of his own authority, except in case of urgent necessity, in which case notice thereof shall be forthwith given to the Superintendent.

Case-law :—(a) Magistrate convicting prison warden under S. 54, U.B.R. (1892—1896), Vol. I, 299; power of Superintendent of Jail to convict watchman for aiding escape of prisoners, 4 N.W.P. 4; disobedience of rules in Jail Manual whether penal, 7 S.L.R. 49—14 Cr. L.J. 619—21 Ind. Cas. 667; refusal of medical subordinate to submit to search, *ibid*.

- 59.** The Governor General in Council may for any part of British India, and each Local Government with the previous sanction of the Governor General in Council may, for the territories under its administration, make rules consistent with this Act—
- Power to make rules.
- (1) defining the acts which shall constitute prison-offences ;
 - (2) determining the classification of prison-offences into serious and minor offences ;
 - (3) fixing the punishments admissible under this Act which shall be awardable for commission of prison-offences or classes thereof ;
 - (4) declaring the circumstances in which acts constituting both a prison-offence and an offence under the Indian Penal Code XLV of 1860. may or may not be dealt with as a prison-offence ;
 - (5) for the award of marks and the shortening of sentences ;
 - (6) regulating the use of arms against any prisoner or body of prisoners in the case of an outbreak or attempt to escape ;
 - (7) defining the circumstances and regulating the conditions under which prisoners in danger of death may be released ;
 - (8) regulating the transfer from one part of British India to another of prisoners whose term of transportation or imprisonment is about to expire ; and,
 - (9) generally, for carrying into effect the purposes of this Act.

Power of Local Government to make rules.

60. The Local Government may, subject to the control of the Governor General in Council, make rules consistent with this Act—

- (a) for the classification of prisons, and description and construction of wards, cells and other places of detention ;
- (b) for the regulation by numbers, length or character of sentences, or otherwise, of the prisoners to be confined in each class of prisons ;
- (c) for the government of prisons and for the appointment, guidance, control, punishment and dismissal of all officers appointed under this Act ;
- (d) as to the food, bedding and clothing of criminal prisoners and of civil prisoners maintained otherwise than at their own cost ;
- (e) for the employment, instruction and control of convicts within or without prisons ;
- (f) for defining articles the introduction or removal of which into or out of prisons without due authority is prohibited ;
- (g) for classifying and prescribing the forms of labour and regulating the periods of rest from labour ;

- (h) for regulating the disposal of the proceeds of the employment of prisoners ;
- (i) for regulating the confinement in fetters of prisoners sentenced to transportation ;
- (j) for the classification and the separation of prisoners ;
- (k) for regulating the confinement of convicted criminal prisoners under section 28 ;
- (l) for the preparation and maintenance of history-tickets ;
- (m) for the selection and appointment of prisoners as officers of prisons :
- (n) for rewards for good conduct ;
- (o) for regulating the transfer of prisoners whose term of transportation or imprisonment is about to expire ;
- (p) for the treatment, transfer and disposal of criminal lunatics or recovered criminal lunatics confined in prisons ;
- (q) for regulating the transmission of appeals and petitions from prisoners and their communications with their friends ;
- (r) for the appointment and guidance of visitors of prisons ;
- (s) for extending any or all of the provisions of this Act and of the rules thereunder to subsidiary jails or special places of confinement appointed under section 541 of the Code of Criminal Procedure, 1882, and to the officers employed, and the prisoners confined, therein ; and
- (a)(t) generally in regard to the admission, custody, employment, disting, treatment and release of prisoners, and for other purposes consistent with this Act.

X of 1882.

61. Copies of rules, under sections 59 and 60 so far as they affect the government of prisons, shall be exhibited, both in English and in the Vernacular, in some place to which all persons employed within a prison have access.

62. All or any of the powers and duties conferred and imposed by this Act on a Superintendent or Medical Officer may in his absence be exercised and performed by such other officer as the Local Government may appoint in this behalf either by name or by his official designation.

Case-law :—(a) Different jails, division of imprisonment between, Rat. Un. Cr. Cas. 837.

THE SCHEDULE.
ENACTMENTS REPEALED.
(See section 2.)

Year.	No.	Title or short title.	Extent of repeal.
1	2	3	4
<i>Acts of the Governor General in Council.</i>			
1856	VIII	An Act for the better control of the jails within the Presidency of Bombay.	So much as has not been [repealed.
1870	XXVI	Prisons Act, 1870 ...	Do. do.
1874	XV	Laws Local Extent Act, 1874 ...	So much of Part (b) of the Third Schedule as relates to Act VIII of 1856.
1878	XIV	An Act to assimilate certain powers of the Local Government of the North Western Provinces and Oudh.	Section 2.
[1] *	*	* * *	* * *
1891	XII	Repealing and Amending Act, 1891.	So much of the second schedule as relates to Acts VIII of 1856 and XXVI of 1870.
<i>Acts of the Governor of Fort St. George in Council.</i>			
1869	V	Madras Jails Act, 1869 ...	So much as has not been repealed.
1882	VII	Madras Jails Act Amendment Act, 1882.	The whole.
1889	II	An Act to amend the Madras Jails Act, 1869.	Do.
<i>Acts of the Governor of Bombay in Council.</i>			
1874	II	An Act for the regulation of Jails in the City and Presidency of Bombay, and the enforcement of discipline therein.	So much as has not been repealed except sections 9 to 16 (both inclusive) as amended by Bombay Act II of 1882.
1882	II	An Act to amend Bombay Act II of 1874.	Section 3.
1889	IV	An Act to amend the Law concerning the confinement of civil prisoners liable to imprisonment under the Criminal Procedure Code.	The whole.
1887	I	An Act to further amend Bombay Act II of 1874.	Do.

Leg. Changes:—[1] The entry repealing that portion of the Upper Burma Laws Act, 1886 (XX of 1886), which relates to Act XXVI of 1870 was repealed by the Burma Laws Act XIII of 1898.

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THE SCHEDULE—(Concluded).

Year.	No.	Title or short title.	Extent of repeal.
1	2	3	4
<i>Acts of the Lieutenant Governor of Bengal in Council.</i>			
1864	II	An Act for the regulation of Jails and the enforcement of discipline therein.	So much as has not been repealed.
1865	V	An Act to amend Act II of 1864, passed by the Lieutenant-Governor of Bengal in Council, and to extend the provisions thereof to the Presidency Jail.	Do. do.
<i>Regulations made under the Statute 33 Victoria, Chapter 3.</i>			
1872	III	Santhal Parganas Settlement Regulation.	So much of the Schedule (as amended by Regulation III of 1886) as relates to Bengal Acts II of 1864 and V of 1865.
1874	IX	Arakan Hill District Laws Regulation, 1874.	So much as relates to Act XXVI of 1870.
1875	II	Assam Prisons Regulation, 1875.	The whole.
1890	I	British Baluchistan Laws Regulation, 1890.	So much as relates to Act XXVI of 1870.

**THE PROVIDENT INSURANCE SOCIETIES
ACT, 1912.**

(ACT V OF 1912.)

[Passed on the 18th March, 1912.]

An Act to provide for the regulation of Provident Insurance Societies.

WHEREAS it is expedient to provide for the regulation of Provident Insurance Societies; It is hereby enacted as follows:—

Preliminary.

Short title and extent. 1. (1) This Act may be called the Provident Insurance Societies Act, 1912; and

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in the exercise of its ordinary original civil jurisdiction:

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- (2) " financial year " means each period of twelve months at the end of which the balance of the accounts of any Provident Insurance Society is struck, or, if no such balance is struck, then the calendar year :
- (3) " life assurance business " means the issue of, or the undertaking of liability under, policies of assurance upon human life, or the granting of annuities upon human life :
- (4) " policy of assurance on human life " means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life :
- (5) " policy-holder " means the person who for the time being is the legal holder of the policy for securing the contract with the Provident Insurance Society :
- (6) where a Provident Insurance Society grants annuities upon human life, " policy " includes the instrument evidencing the contract to pay such an annuity, and " policy-holder " includes annuitant :
- (7) " prescribed " means prescribed by rules made under this Act :
- (8) " Provident Insurance Society " means any person who, or body of persons whether corporate or unincorporate which, receives premiums or contributions for insuring money to be paid on the birth, marriage or death of any person or on the happening of such other contingency or class of contingency as may be prescribed : and
- (8) " Registrar " means any person who may be appointed by the Local Government to perform the duties of the Registrar under this Act.

3. Nothing in this Act shall apply to any Provident Insurance

Application of Act. Society carrying on life assurance business, which

undertakes to pay on any life assurance policy or series of life assurance policies on any one life, an annuity exceeding fifty rupees or a gross sum exceeding five hundred rupees, or which receives or undertakes to receive by way of premium or contribution for life assurance on any one life any sum exceeding two hundred and fifty rupees where the said premiums or contributions are payable for one year or a limited number of years, or exceeding twenty-five rupees in any one year where the premiums or contributions are unlimited in number and terminable on death or the occurrence of an uncertain event :

Provided that, in determining whether this Act applies to any Provident Insurance Society carrying on life insurance business, contracts entered into by the society before the commencement of this Act shall not be taken into consideration.

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General.

4. No Provident Insurance Society shall receive any premium or contribution for insuring money to be paid on the death of any person other than the person paying such premium or contribution or the wife, husband, child, parent, brother or sister of such person.

5. (a) Every Provident Insurance Society shall, by its rules,—
Provision to be made by rules.

- (a) specify the object, name and registered office of the society ;
- (b) prescribe the proportion of the annual income of the society derived from premiums or contributions which may be disbursed for the expenses of management of the society ;
- (c) in the case of a society which by rule or practice divides any part of the funds thereof, provide for the payment of all debts due by the society existing at the time of division before any such division has taken place ; and
- (d) provide for any other matters which may be prescribed.

6. (1) (b) Every Provident Insurance Society shall, within three months from the commencement of this Act, or, if established after the commencement of this Act, before it receives any premium or contribution, apply to the Registrar for that part of British India in which the office of the society is situate for registration under this Act, and shall deliver to him a copy of the rules of the society.

(2) The Registrar shall, on being satisfied that such rules comply with the provisions of this Act, acknowledge the receipt of the rules and register the society and its rules.

(3) If the Registrar is not satisfied that the rules or any of them comply with the provisions of this Act, he shall send to the Provident Insurance Society a notice by post stating in what respect such rule or rules is or are not in accordance with the provisions of this Act, and calling upon such society to deliver to him an amended rule or rules within sixty days.

(4) On receipt of a notice under sub-section (3), the Provident Insurance Society may, within sixty days, deliver to the Registrar an amended rule or rules in conformity with this Act, and the Registrar shall thereupon acknowledge the receipt of the rules and register the Society and its rules as hereinbefore provided.

7. No Provident Insurance Society shall receive any premium or contribution unless it is registered in accordance with the provisions of this Act :
Unregistered society not to receive premium or contribution.

Provided that this prohibition shall only apply to a society established before the commencement of this Act—

- (a) when such society has applied for registration in accordance with the provisions of section 6, sub-section (1)—from the date of the order of the Registrar refusing registry ,

Case-law :—(a) See 40 C. 570=21 Ind. Cas. 258. (b) Registration if necessary of company with its share capital divided into shares or not, 18 C.W.N. 1182=42 C. 300: registration to be made subject to certain conditions set out in the Act, 40 C. 570 (578).

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(b) when such society has not applied as aforesaid—after three months from the commencement of this Act.

8. (1) No amendment of any rule of a Provident Insurance Society shall be valid until the same has been registered under this Act, for which purpose a copy of the amended rule shall be sent to the Registrar.

Amendment of rules.

(2) The Registrar shall, on being satisfied that any amendment of a rule is not contrary to the provisions of this Act, issue to the society an acknowledgment of the registration of the same.

9. Every Provident Insurance Society shall, on demand, deliver free of cost to any member of the society a copy of the rules of the society, and to any person other than a member a copy of such rules on the payment of a sum not exceeding one rupee.

Right to supply of copies of rules.

10. Every Provident Insurance Society which is not registered under the Indian Companies Act, 1882, shall cause to be kept in the prescribed form a register of the names and addresses of its members.

Register of members.

11. Where any notice, advertisement or other official publication of a Provident Insurance Society contains a statement of the amount of the authorised capital of the society, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up.

Publication of authorised, subscribed and paid up capital.

12. Every Provident Insurance Society which is not registered under the Indian Companies Act, 1882, shall have an office on the outside of which it shall display and keep displayed its name in a conspicuous position in legible letters, to which all communications and notices may be addressed, and shall give notice to the Registrar of the situation of such office and of any change therein.

Office.

13. Every Provident Insurance Society shall, at the expiration of each financial year, prepare a revenue-account and balance-sheet in the prescribed form and verified in the prescribed manner, and shall cause them to be audited by an auditor possessing the prescribed qualifications.

Revenue-account and balance-sheet.

14. Every Provident Insurance Society shall, within six months of the expiration of each financial year, deliver to the Registrar the revenue-account and balance-sheet required by section 13, and shall publish them in the prescribed manner.

Delivery and publication of revenue-account, etc.

15. Every Provident Insurance Society shall maintain in the prescribed form a record of every insurance effected on a life other than the life of the person insuring, and shall deliver a copy of such record to the Registrar, together with the balance-sheet and revenue-account.

Record of insurances effected on life other than life of person insuring.

Provident ACT V OF 1912 (PROVIDENT INSURANCE SOCIETIES). S. 16

16. The books of every Provident Insurance Society shall at all reasonable hours be open to inspection by the Registrar, or by any person appointed by him in this behalf or by any member of the society.

Inspection of books.

17. (1) The Registrar may, if he thinks fit, of his own motion, and shall, upon the application of ten or more members or policy-holders of a Provident Insurance Society, hold or direct an inquiry to be held by an actuary possessing the prescribed qualifications appointed by him by order in writing in this behalf as to the solvency of any Provident Insurance Society or as to the manner in which the business of any such society is conducted.

Inquiry.

(2) An application to the Registrar under sub-section (1) shall be supported by such evidence as the Registrar may require for the purpose of showing that the applicants have good reason for applying for an inquiry.

(3) The Registrar may require the applicants under sub-section (1) to give such security as he thinks fit for the costs of the proposed inquiry before such an inquiry is held.

(4) All expenses of, and incidental to or preliminary to, any inquiry made on application as aforesaid shall be defrayed by the applicants therefor or out of the funds of the society or by the members or officers of the society in such proportions as the Registrar may direct by order in writing.

(5) An order made under sub-section (4) shall on application be enforced by any Civil Court having local jurisdiction in the same manner as a decree of such Court.

(6) A person holding an inquiry under this section shall have access to all the books and documents of the society, and shall have power to call upon the society and the officers of the society to furnish such statements and other information in relation to its business as he may direct.

(7) The result of the inquiry shall be communicated to the society and to the applicants (if any).

18. When an enquiry has been held under section 17, the Registrar may, if he is satisfied—

Cancellation of registry.

(a) that the society is insolvent, or must necessarily become so, or

(b) that the business of any such society is conducted fraudulently or not in accordance with the rules thereof,

after giving previous notice in writing in such manner as he thinks fit specifying briefly the grounds of the proposed cancellation, cancel the registry of the society.

19. (1) Where the registry of a Provident Insurance Society is cancelled in accordance with the provisions of section 18, the Registrar may appoint a liquidator to wind up the society.

Liquidators.

(2) A liquidator appointed under sub-section (1) shall have power—

(a) to institute or defend any legal proceedings on behalf of the society by his name of office ;

§. 21 ACT V OF 1912 (PROVIDENT INSURANCE SOCIETIES). Provident

- (b) to determine the contribution to be made by members of the society, respectively, to the assets of the society ;
- (c) to investigate all claims against the society and to decide questions of priority arising between claimants ;
- (d) to determine by what persons and in what proportions the costs of the liquidation are to be borne ; and
- (e) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society.

(3) Subject to any rules of procedure made under this Act, a liquidator appointed under this section shall, in so far as such powers are necessary to carry out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and as far as may be in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908.

V of 1908.

(4) Orders made under this section shall on application be enforced as follows :—

- (a) when made by a liquidator, by any Civil Court having local jurisdiction in the same manner as a decree of such Court;
- (b) when made by the Court on appeal, in the same manner, as a decree of the Court.

Appeals.

Appeals. **20.** (1) An appeal shall lie to the Court within thirty days—

- (a) from an order of the Registrar refusing to register a Provident Insurance Society or any rules or amendments of rules of such society ;
- (b) from an order of the Registrar cancelling the registry of a society ;
- (c) from an order made by a liquidator appointed under section 19.

(2) Save as hereinbefore expressly provided, orders made under this Act shall be final and conclusive.

Offences and Procedure.

21. Any Provident Insurance Society which makes default in complying with any of the requirements of this Act, and every director, manager or secretary, or other officer or agent of the society, who is knowingly a party to the default, shall be punishable with fine which may extend to five hundred rupees, or, in the case of a continuing default, with fine which may extend to two hundred and fifty rupees for every day during which the default continues.

Case-law :—(a) For a case where fine was levied, see 18 C.W.N. 1182 = 42 C. 300 = 16 Cr. L.J. 149 = 27 Ind. Cas. 213 = 16 Cr. L.J. 673 = 30 Ind. Cas. 721.

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22. If any register, account, balance-sheet or other document required by this Act is false in any particular to the knowledge of any person who signs it, such person shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty for falsifying documents.

23. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act.

Cognizance of offences.

Rules.

24. (1) The Local Government may make rules to carry out the purposes of this Act.

Rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

- (a) contingencies or classes of contingencies and thereby extend the application of this Act to the receipt of premiums or contributions for insuring money to be paid on the happening of such contingencies or class of contingencies ;
- (b) the matters in respect of which a society shall make rules ;
- (c) the form of any account, return or register required by this Act, and the manner in which any such account, return or register shall be verified ;
- (d) the fees to be charged for matters transacted under this Act, and the manner in which the same are to be collected ;
- (e) the qualifications of auditors and actuaries under this Act ;
- (f) the manner in which any document required to be published by this Act shall be published ; and
- (g) the procedure to be followed by liquidators under this Act.

(3) The power to make rules conferred by this Act is subject to the condition of the rules being made after previous publication.

(4) All rules made under this Act shall be published in the local official Gazette, and on such publication shall have effect as if enacted therein.

Miscellaneous.

25. No policy effected before the commencement of this Act with a Provident Insurance Society shall be deemed to be void by reason only that the insurance is not authorized by this Act.

Saving of existing policies.

26. The Local Government may, by notification in the local official Gazette, and subject to such conditions and restrictions as it thinks fit, exempt any Provident Insurance Society or class of Provident Insurance Societies from all or any of the provisions of this Act.

Power of Local Government to exempt from provisions of the Act.

S. 6 ACT XII OF 1850 (PUBLIC ACCNTS'. DEF.). Public Accountants'.

THE PUBLIC ACCOUNTANTS' DEFAULT ACT, 1850.

(ACT XII OF 1850.)

[Passed on the 22nd March, 1850.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1850	XII	Public Accountants' Default ...	Rep. in pt., Act XIV of 1870.

For avoiding loss by the default of Public Accountants.

Preamble. For better avoidance of loss through the default of public accountants : It is enacted as follows :—

1. Every public accountant shall give security for the due discharge of the trusts of his office, and for the due account of all moneys which shall come into his possession or control, by reason of his office.

2. In default of any Act having special reference to the office of any public accountant, the security given shall be of such amount and kind, real or personal, or both, and with such sureties (regard being had to the nature of the office), as shall be required by any rules made or to be made from time to time, by the authority by which each public accountant is appointed to his office, subject to the approval of the Governor or Governor in Council of the Presidency or place.

3. Every person is a public accountant within the meaning of this Act who, by reason of any office held by him in the service of the East India Company, is entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to the East India Company, or as Official Assignee or Trustee, or as sarbarahkar, or in any other official capacity, with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to any other person or persons.

4. The person or persons at the head of the office to which any public accountant belongs may proceed against any such public accountant and his sureties for any loss or defalcation in his accounts, as if the amount thereof were an arrear of land-revenue due to Government.

5. All Regulations and Acts now or hereafter to be in force for the recovery of arrears of land-revenue due to Government, and for recovery of damages by any person wrongfully proceeded against for any such arrear shall apply, with such changes in the forms of procedure as are necessary to make them applicable to the case, to the proceedings against and by such public accountant.

6. [Validation of former rules.] Rep. by the Repealing Act, 1870 (XIV of 1870).

THE PUBLIC GAMBLING ACT, 1867.

(ACT III OF 1867.)

[Passed on the 25th January, 1867.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1867	III	Public Gambling	Rep. in pt., Act XVI of 1874. Am. in pt., Act XII of 1891. " " Act I of 1903. Rep. in pt., Act XVII of 1914.

An Act (a) to provide for the punishment of public gambling and the keeping of common gaming-houses in the North-Western Provinces of the Presidency of Fort William, and in the Punjab, Oudh, and the Central Provinces.

WHEREAS it is expedient to make provision for the punishment of public gambling and the keeping of common gaming-houses in the territories respectively subject to the Governments of the Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William, and of the Lieutenant-Governor of the Punjab, and to the administrations of the Chief Commissioner of Oudh, and of the Chief Commissioner of the Central Provinces; It is hereby enacted as follows:—

Interpretation-
clause.

1. In this Act—

"Lieutenant-Governor."

"Lieutenant-Governor" means the Lieutenant-Governor of the United Provinces of Agra and Oudh or of the Punjab, as the case may be:

"Chief Commissioner."

"Chief Commissioner" means the Chief Commissioner of the Central Provinces or of the North-West Frontier Province, as the case may be:

"Common gaming-house" (b) means any house, walled enclosure, room or place (c) in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, enclosure, room or place, whether by way of charge

Case-law :—(a) Construction, L.B.R. (1872—1892) 58 and 86, 281; object, 2 N. W.P. 289; application, in case of seizure of money found on person of gambler, 7 A.L.J. 404—6 Ind. Cas 586—11 Cr.L.J. 373; games when punishable, 13 Cr.L.J. 28 (6 O.P.L. R. Cr. 17, *relied upon*). (b) Defined, 27 A. 567—A.W.N. (1905) 106—2 Cr. L.J. 245; 8 N.W.P. 134; garden enclosed with hedge, 14 P.R. 1896, Cr.; presumptive evidence regarding, L.B.R. (1872—1892) 548. (c) Interpretation of, 18 A.L.J. 1070—88 A. 47—16 Cr. L.J. 826—31 Ind. Cas, 1002.

S. 3 ACT III OF 1867 (PUBLIC GAMBLING). Public Gambling

for the use of the instruments of gaming, or of the house, enclosure, room or place, or otherwise howsoever :

Number.	[1]	*	*	*
Gender.	*	*	*	*

2. Sections 13 and 17 of this Act shall extend to the whole of the said territories; and it shall be competent to the Lieutenant-Governor or the Chief Commissioner, as the case may be, whenever he may think fit, to extend^(a), by a notification to be published in three successive numbers of the official Gazette, all or any of the remaining sections of this Act to any city, town, suburb, railway-station-house and place being not more than three miles distant from any part of such station-house within the territories subject to his government or administration, and in such notification to define, for the purposes of this Act, the limits of such city, town, suburb or station-house, and, from time to time, to alter the limits so defined.

From the date of any such extension, so much of any rule having the force of law which shall be in operation in the territories, to which such extension shall have been made, as shall be inconsistent with or repugnant to any section so extended, shall cease to have effect in such territories.

3. Whoever, being the owner or occupier, or having the use, of any house, walled enclosure, room or place^(c), situate within the limits to which this Act applies, opens, keeps or uses the same as a common gaming-house; and

Penalty for owning or keeping, or having charge of, a gaming-house^(b).

Leg. Changes :—[1] Paras *re* Number and Gender were repealed by Act XVII of 1914.

Case-law :—(a) Subsequent alteration of Municipal boundaries, A.W.N. (1906) 193 = 3 Cr. L.J. 439; notification extending provisions of the Act, validity of, 12 P.R. 1886, Cr.; in notification extending the provisions of Act to a town, i.e., cantonment not included, 23 P.R. 1887, Cr.; notifications regarding extending provisions of Act to a place in one issue of gazette, 3 P.R. 1885, Cr.; see, also, 41 P.R. 1885, Cr.; whether a question of law or fact, question of what provision of the Act has been extended to a particular locality, 41 P.R. 1885, Cr. (b) Act to be construed strictly, L.B.R. (1872—1892) 280 (283); facts necessary to be proved, 16 A.L.J. 760; offence under S. 3 more serious than one under S. 4, 9 N.L.R. 68; offenders under section—punishment, L.B.R. (1872—1892) 429; evidence of use of instruments of gaming, essential for conviction, L.B.R. (1872—1892) 539; 19 P.R. 1871, Cr.; conviction, when sustainable, 6 C.P.L.R. 17, Cr.; conviction under Ss. 3 and 4, essentials for, 46 P.R. 1867, Cr. = 20 O.O. 4; legality of joint trial, 35 P.R. 1914, Cr.; 9 N.L.R. 68; cards-playing in a private house, L.B.R. (1872—1892) 57, 59; allowing gambling in one's house and lending money to gamble, if offence, U.B.R. (1897—1901), Vol. I, 924; gambling not an offence *per se*, S.O. 208 (Oudh); effect of owner of the house being also a gambler, A.W.N. (1905) 106 (N) = 27 A. 568 (N); (27 A. 567 = A.W.N. (1905) 106, R.); keeping common gambling houses and gambling in them by owner, separate convictions, L.B.R. (1893—1900) 459; right of house-owner, L.B.R. (1872—1892) 53; discretion of Chief Court to hear pleader in revision when there is misjoinder of charges, 5 P.W.R. 1910, Cr. = 5 Ind. Cas. 720 = 11 Cr. L.J. 211; presumption, 10 A.L.J. 355; sentence of imprisonment and fine, L.B.R. (1872—1892) 434; Magistrate incompetent to pass sentence exceeding Rs. 400 or six months' rigorous imprisonment, A.W.N. (1881) 111. (c) May be public place, though private property of individual, 9 N.L.R. 134.

whoever, being the owner or occupier of any such house, walled enclosure, room or place as aforesaid, knowingly or wilfully permits the same to be opened, occupied, used or kept by any other person as a common gaming-house; and

whoever has the care or management of, or in any manner assists in conducting, the business of any house, walled enclosure, room or place as aforesaid, opened, occupied, used or kept for the purpose aforesaid; and

whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, walled enclosure, room or place,

shall be liable to a fine not exceeding two hundred rupees, or to XLV of 1860. imprisonment of either description as defined in the Indian Penal Code, for any term not exceeding three months.

4. Whoever is found in any such house, walled enclosure, room or place, playing or gaming with cards, dice, counters, money or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake or otherwise,

shall be liable to a fine not exceeding one hundred rupees, or to XLV of 1860. imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding one month;

and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

Power to enter and authorise Police to enter and search (b).

5. If the Magistrate of a district, or other officer invested with the full powers of a Magis-

Case-law:—(a) Act punishable under section is offence, 27 P.R. 1881, Cr.; gambling in a private house, 2 N.W.P. 289; gambling in a vacant unenclosed site, 18 M. 46 = 1 Weir 919; gambling as friendly amusement without making profit by levying commission, no offence, 20 O.C. 4; accused not found in a gaming house. Colm. Dig. Cr. 63 of 1876; being found in a common gaming house, scope of expression, 22 P.R. 1895 (35 P.R. 1894, *Expt.*); gambling in a common gaming house, 35 P.R. 1894, Cr.; gambler found in a common gaming house—Magistrate acting upon information supplied by private individual, L.B.R. (1893—1900) 321; [L.B.R. (1872—1892) 486; L.B.R. (1893—1900) 251, D]; presumption, 10 A.L.J. 355; conviction of owner or keeper of a common gaming house when there is illegality in warrant, 22 P.R. 1895, Cr.; punishment for offences under section, L.B.R. (1872—1894) 486 (487); L.B.R. (1872—1892) 428; imprisonment for offences under the Act, L.B.R. (1872—1892) 428 (429); imprisonment in default of fine, L.B.R. (1893—1900) 385; limit of sentence, A.W.N. (1881) 129; legality of joint trial, 35 P.R. 1914, Cr.; 9 N.L.R. 68 = 14 Cr. L.J. 293 = 19 Ind. Cas. 949; 6 P.R. 1919, Cr. (b) Conditions for issuing search warrant, 7 P.R. 1882, Cr. (F.B.); (19 P.R. 1871, Cr., and 9 P.R. 1876, Cr., R.); S.O. 203 (Oudh); credible information, whether should be taken upon oath or affirmation, 7 P.R. 1882, Cr. (F.B.); (19 P.R. 1871, Cr., and 9 P.R. 1876, Cr., R.); 28 A. 210 = A.W.N. (1905) 257; search warrant whether can be issued on Police report, 9 P.R. 1876, Cr.; entry and search under the section, when justified, 2 N.W.P. 476 (9 Bom. L.R. 695 = 31 B. 438, R.); A.W.N. (1891) 111; A.W.N. (1890) 226; presumption regarding search warrant on credible information, 29 P.R. 1891, Cr. (19 P.R. 1871, Cr., and 9 P.R. 1876, Cr., R.); 9 N.L.R. 68 = 14 Cr. L.J. 293 = 19 Ind. Cas. 949; presumption as to Judge importing his own knowledge into case and signing warrant with pencil, 5 O.C. 37; meaning of signing a warrant, 17 P.R. 1897, Cr.; what is illegal warrant, 11 P.R. 1895, Cr.; irregularity in issuing search warrant, A.W.N. (1884) 59; A.W.N. (1894) 286 (9 A. 528, R.); A.W.N. (1884) 291; imperfect description of house to be searched, A.W.N. (1905) 105 = 2 Cr. L.J. 243; search warrant issued without affixing Court seal, 23 P.R. 1910, Cr. (11 P.R. 1895, Cr., F.); presumption under the section when arises, 1 A.L.J. 115; L.B.R. (1872—1892) 53; search by officer other than the one named in

trate (a), or the District Superintendent of Police, upon credible information, and after such enquiry as he may think necessary, has reason to believe that any house, walled enclosure, room or place, is used as a common gaming-house,

he may either himself enter, or by his warrant authorize any officer of Police, not below such rank as the Lieutenant-Governor or Chief Commissioner shall appoint in this behalf, to enter, with such assistance as may be found necessary, by night or by day, and by force if necessary, any such house, walled enclosure, room or place,

and may either himself take into custody, or authorize such officer to take into custody, all persons whom he or such officer find therein, whether or not then actually gaming ;

and may seize or authorize such officer to seize all instruments of gaming, and all moneys and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming, which are found therein ;

and may search or authorize such officer to search all parts of the house, walled enclosure, room or place which he or such officer shall have so entered when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody ;

and may seize or authorize such officer to seize and take possession of all instruments of gaming found upon such search.

6. When any cards, dice, gaming-tables, cloths, boards or other instruments of gaming (c) are found in any house,

Finding cards, etc., in suspected houses, to be evidence that such houses are common gaming-houses (b).

walled enclosure, room or place, entered or searched under the provisions of the last preceding section, or about the person of any of those who are found therein, it shall be evidence, until the contrary is made to appear, that such house, walled enclosure, room or place is used as a common gaming-house, and that

the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or Police-officer, or any of his assistants.

the search warrant, 22 P.R. 1895. Cr. ; jurisdiction of Magistrate to leave execution of warrant to discretion of Police, L.B.R. (1872—1892) 86 (87) ; warrant addressed to several Police officers, 17 P.R. 1897, Cr. ; Police officer endorsing warrant for execution to another Police officer, 5 A.L.J. 59=A.W.N. (1908) 9=7 Cr. L.J. 19=30 A. 60 (28 A. 210=A.W.N. (1905) 257, R. ; search of two or more houses, 17 P.R. 1897, Cr. ; seizure of money on the persons of gamblers in common gaming house, L.B.R. (1872—1892) 281.

Case-law :—(a) Meaning of “ officer invested with full power of a Magistrate”, 10 A.L.J. 169=34 A. 597=16 Ind. Cas. 524=13 Cr. L.J. 716. (b) When presumption under section arises, L.B.R. (1872—1892) 53, 407 ; 1 A.L.J. 115 : non-compliance with the provisions of S. 5 and finding of money, A.W.N. (1882) 132 (18 A. 23, R. ; 16 A. 420, D.) ; finding cards, etc., without search warrant, whether evidence, 19 P.R. 1876, Cr. ; see, also, 9 P.R. 1876, Cr. ; finding of cards when *prima facie* evidence, 2 N.W.P. 476 ; search conducted by unauthorised police officer, irregularity in warrant, 12 Cr. L.J. 28=8 Ind. Cas. 1127=6 N.L.R. 168 ; A.W.N. (1894) 286 ; 4 C. 710, 659 ; 5 B.H.C.R. Cr. 1 ; A.W.N. (1884) 291 ; common gaming house, evidence *re*, A.W.N. (1905) 257=28 A. 210 (5 A.L.J. 59=A.W.N. (1903), 9=30 A. 60=7 Cr. L.J. 19, R.). (c) “ Cowries,” whether, 18 A. 28=2 P.R. 1896, Cr. ; 6 C.P.L.R. 17, Cr. ; 19 A. 311=A.W.N. (1897) 117 [A.W.N. (1895) 139 ; 25 C. 432, R.] .

7. If any person found in any common gaming-house entered by any Magistrate or officer of Police under the provisions of this Act, upon being arrested by any such officer or upon being brought before any Magistrate, on being required by such officer or Magistrate to give his name and address, shall refuse or neglect to give the same, or shall give any false name or address, he may, upon conviction before the same or any other Magistrate, be adjudged to pay any penalty not exceeding five hundred rupees, together with such costs as to such Magistrate shall appear reasonable, and on the non-payment of such penalty and costs, or in the first instance, if to such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

Penalty on persons arrested for giving false names and addresses.

8. On conviction of any person for keeping or using any such common gaming-house, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money and other articles seized, not being instruments of gaming to be sold and converted into money, and the proceeds thereof with all moneys seized therein to be forfeited (a); or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

On conviction for keeping a gaming-house, instruments of gaming to be destroyed.

9. It shall not be necessary, in order to convict any person of keeping a common gaming-house, or of being concerned in the management of any common gaming house, to prove that any person found playing at any game was playing for any money, wager or stake.

Proof of playing for stakes unnecessary.

10. It shall be lawful for the Magistrate before whom any persons shall be brought, who have been found in any house, walled enclosure, room or place entered under the provisions of this Act, to require any such persons to be examined on oath or solemn affirmation, and give evidence touching any unlawful gaming in such house, walled enclosure, room or place, or touching any act done for the purpose of preventing, obstructing or delaying the entry into such house, walled enclosure, room or place or any part thereof, of any Magistrate or officer authorized as aforesaid.

Magistrate may require any person apprehended to be sworn and give evidence (b).

No person so required to be examined as a witness shall be excused from being so examined when brought before such Magistrate as aforesaid, or from being so examined at any subsequent time by or before the same or any other Magistrate, or by or before any Court on any proceeding or trial in any ways relating to such unlawful gaming or any such acts as aforesaid, or from answering any question put to him touching the matters aforesaid, on the ground that his evidence will tend to criminate himself.

Case-law.—(a) Confiscation of property, when can be ordered, 5 P.R. 1899, Cr. ; order for confiscation of money on the persons of accused, invalid, 17 A.L.J. 369 ; but see 17 A.L.J. 64, where it is held that forfeiture of the money seized in the house is legal. (b) One of the accused examined as a witness against others, 1 A.L.J. 115 ; effect and scope of section, 9 N.L.R. 68 = 14 Cr. L.J. 293 = 19 Ind. Cas. 949.

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Any such person so required to be examined as a witness who refuses to make oath or take affirmation accordingly or to answer any such question as aforesaid, shall be subject to be dealt with in all respects as any person committing the offence described in section 178 or section 179 (as the case may be) of the Indian Penal Code.

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11. Any person who shall have been concerned in gaming contrary to this Act, and who shall be examined as a witness before a Magistrate on the trial of any person for a breach of any of the provisions of this Act relating to gaming, and who, upon such examination, shall, in the opinion of the Magistrate, make true and faithful discovery, to the best of his knowledge, of all things as to which he shall be so examined, shall thereupon receive from the said Magistrate a certificate in writing to that effect, and shall be freed from all prosecutions under this Act for anything done before that time in respect of such gaming.

Witnesses indemnified(a).

Act not to apply to certain games.

12. Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played.

Gaming and setting birds and animals to fight in public streets.

13. (b) A Police-officer may apprehend without warrant—

any person found playing for money or other valuable thing with cards, dice, counters or other instruments of gaming (c), used in playing any game not being a game of mere skill, in any public street, place or thoroughfare (d) situated within the limits aforesaid (e), or

any person setting any birds or animals to fight in any public street, place or thoroughfare situated within the limits aforesaid, or

any person there present aiding and abetting (f) such public fighting of birds and animals.

Such persons when apprehended (g) shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month (h);

Case-law :—(a) Approver, conditions for acquittal of, 20 O.C. 4. (b) Nature of section, 9 Ind. Cas. 630. (c) Lottery tickets, *ibid.*, 14 N.L.R. 137; fighting cocks not instruments of gaming, L.B.R. (1872—1892) 407; fighting birds, bulls or any other animals, L.B.R. (1872—1892) 317; bullock race not an offence under the Act, L.B.R. (1872—1892) 541; tossing for pice, instrument of gaming, L.B.R. (1872—1892) 155; money, L.B.R. (1872—1892) 155, 156, 157; mere game of skill, game of chance, 8 A.L.J. 1962. (d) What are public places—Kwin, L.B.R. (1872—1892) 317; chabutra of a temple, A.W.N. (1895) 127; gambling with cards in a public road, 1 Weir 239; gambling in a market place, 1 Weir 242; what are not public places—verandah attached to a room, A.W.N. (1881) 17; Tharra, 11 P.R. 1880, Cr.; 9 P.R. 1905, Cr.=2 Cr. L.J. 46=123 P.L.R. 1905 (17 P.R. 1882, Cr.; 8 C.W.N. 592; 31 C. 542, R.); gambling in a grove, 1 A.L.J. 129; A.W.N. (1904) 92; Hindu temple, 13 P.R. 1882, Cr.; the Chabutra of a shop, A.W.N. (1881) 8; A.W.N. (1887) 8; gambling in private house, 1 Weir 240; 2 N.W.P. 289; gambling in an arrack shop, 1 Weir 647; gambling when punishable, S.C. 63 (Oudh); 3 N.W.P. 1; 3 N.W.P. 134. (e) "Limits aforesaid" meaning of, 9 Ind. Cas. 630=12 Cr. L.J. 107. (f) Spectators, L.B.R. (1872—1892) 163; assembly for the purpose of gambling, 1 Weir 63. (g) Magisterial proceedings against persons not apprehended by the police on the spot, L.B.R. (1893—1900) 251. (h) Fine and imprisonment, 25 P.R. 1880, Cr.

Destruction of instruments of gaming found in public streets. and such Police-officer may seize all instruments of gaming found in such public place (a) or on the person of those whom he shall so arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed (b).

Offences by whom triable. 14. Offences punishable under this Act shall be triable by any Magistrate having jurisdiction (c) in the place where the offence is committed.

X of 1882. But such Magistrate shall be restrained within the limits of his jurisdiction under the Code of Criminal Procedure, 1882, as to the amount of fine or imprisonment he may inflict.

15. Whoever, having been convicted of an offence punishable under section 3 or section 4 of this Act, shall again be guilty of any offence punishable under either of such sections, shall be subject for every such subsequent offence to double the amount of punishment to which he would have been liable for the first commission of an offence of the same description :

Provided that he shall not be liable in any case to a fine exceeding six hundred rupees, or to imprisonment for a term exceeding one year.

16. The Magistrate trying the case may direct any portion of any fine which shall be levied under sections 3 and 4 of this Act, or any part of the moneys or proceeds of articles seized and ordered to be forfeited under this Act, to be paid to an informer (e).

17. All fines imposed under this Act may be recovered in the manner prescribed by section 61 of the Code of Criminal Procedure, 1882, and such fines shall (subject to the provisions contained in the last preceding section) be applied as the Lieutenant-Governor or Chief Commissioner, as the case may be, shall, from time to time, direct.

18. [Offences under this Act to be "offences" within meaning of Penal Code.] Rep. Act XVI of 1874, section 1, and schedule, Part I.

Case-law :—(a) Public place, meaning of, 9 N.L.R. 164; 14 N.L.R. 137. (b) Confiscation of instruments of gaming if money found with gamblers, S.C. 63 (Oudh); confiscation of money gained, illegal, 16 A.L.J. 428; forfeiture of money and payment of reward, 18 P.R. 1891, Cr.; 26 A. 270; order for award to police, Colm. Dig. Cr. 93 of 1877; see, also, L.B.R. (1872—1892) 407; security for good behaviour on conviction for gambling in a public place and forfeiture of security, A.W.N. (1906) 13=3 Cr. L.J. 91. (c) Jurisdiction of Magistrate, L.B.R. (1872—1892) 486. (d) Questions of what provisions of the Act have been extended to a particular locality whether a question of law or fact, 41 P.R. 1885, Cr.; Magistrate incompetent to pass sentence exceeding Rs. 400 or six months' imprisonment, A.W.N. (1881) 111; limit of sentence, A.W.N. (1881). 129. (e) Rewards of informers, L.B.R. (1872—1892) 407; payment out of fine to police-officer for his efforts, 2 P.R. 1870, Cr., fines—rewards—Magistrate, jurisdiction of, L.B.R. (1872—1892) 378.

THE PUBLIC SARAI AND PURAOS ACT, 1867.

See SARAI ACT, infra.

THE PUBLIC SERVANTS (INQUIRIES) ACT, 1850.

(ACT XXXVII OF 1850.)

[*Passed on the 1st November, 1850.*]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1850	XXXVII	Public Servants (Inquiries) ...	Am., Act X of 1914.

For regulating Inquiries into the behaviour of Public Servants.

WHEREAS it is expedient to amend the law for regulating inquiries into the behaviour of public servants not removable from their appointments without the sanction of Government, and to make the same uniform throughout the territories under the Government of India; It is enacted as follows:—

1. [*Repeal of Acts.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

2. Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of the Government not removable from his appointment without the sanction of the Government, it shall cause the substance of the imputations to be drawn into distinct articles of charge, and shall order a formal and public inquiry to be made into the truth thereof.

Articles of charge to be drawn out for public inquiry into conduct of certain public servants.

3. The inquiry may be committed either to the Court, Board or other authority to which the person accused is subordinate, or to any other person or persons, to be specially appointed by the Government, Commissioners for the purpose: notice of which commission shall be given to the person accused ten days at least before the beginning of the inquiry.

Authorities to whom inquiry may be committed.

Notice to accused.

Conduct of Government prosecution.

4. When the Government shall think fit to conduct the prosecution, it shall nominate some person to conduct the same on its behalf.

5. When the charge shall be brought by an accuser, the Government shall require the accusation to be reduced to writing, and verified by the oath or solemn affirmation of the accuser; and every person who shall wilfully and maliciously make any false accusation under this Act, upon such oath or affirmation, shall be liable to the penalties of perjury; but this enactment shall not be construed to prevent the Government from instituting any inquiry which it shall

Charge by accuser to be written and verified.

Penalty for false accusation.

Institution of inquiry by Government.

think fit, without such accusation on oath or solemn affirmation as aforesaid.

6. Where the imputations shall have been made by an accuser, and the Government shall think fit to leave to him the conduct of the prosecution, the Government before appointing the commission shall require him to furnish reasonable security that he will attend and prosecute the charge thoroughly and effectually, and also will be forthcoming to answer any counter-charge or action which may be afterwards brought against him for malicious prosecution or perjury or subornation of perjury, as the case may be.

7. At any subsequent stage of the proceedings, the Government may, if it think fit, abandon the prosecution, and in such case may, if it think fit, on the application of the accuser, allow him to continue the prosecution, if he is desirous of so doing, on his furnishing such security as is hereinbefore mentioned.

8. The commissioners shall have the same power of punishing contempts and obstructions to their proceedings, as is given to Civil and Criminal Courts by [1] the Code of Criminal Procedure, 1898,[1] and shall have the same powers for the summons of witnesses, and for compelling the production of documents, and for the discharge of their duty under the commission,

and shall be entitled to the same protection as the Zila and City Judges, except that all process to cause the attendance of witnesses or other compulsory process shall be served through and executed by the Zila or City Judge in whose jurisdiction the witness or other person resides, on whom the process is to be served, and if he resides within Calcutta, Madras or Bombay, then through the Supreme Court of Judicature there.

When the commission has been issued to a Court, or other person or persons having power to issue such process in the exercise of their ordinary authority, they may also use all such power for the purposes of the commission.

9. All persons disobeying any lawful process issued as aforesaid for the purposes of the commission shall be liable to the same penalties as if the same had issued originally from the Court or other authority through whom it is executed.

10. A copy of the articles of charge, and list of the documents and witnesses by which each charge is to be sustained, shall be delivered to the person accused, at least three days before the beginning of the inquiry, exclusive of the day of delivery and the first day of the inquiry.

11. At the beginning of the inquiry the prosecutor shall exhibit the articles of charge to the commissioners, which shall be openly read, and the person accused shall thereupon be required to plead "guilty" or "not guilty" to each of

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them, which pleas shall be forthwith recorded with the articles of charge.

Non-appearance of
accused and admis-
sion of charge.

If the person accused refuses, or without reasonable cause neglects, to appear to answer the charge either personally or by his counsel or agent, he shall be taken to admit the truth of the articles of charge.

12. The prosecutor shall then be entitled to address the commissioners in explanation of the articles of charge, and of the evidence by which they are to be proved: his address shall not be recorded.

Prosecutor's right
of address.

13. The oral documentary evidence for the prosecution shall then be exhibited: the witnesses shall be examined by or on behalf of the prosecutor and may be cross-examined by or on behalf of the person accused. The prosecutor shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without leave of the commissioners, who also may put such questions as they think fit.

Evidence for pro-
secution and exami-
nation of witnesses.

Re-examination by
prosecutor.

14. If it shall appear necessary before the close of the case for the prosecution, the commissioners may in their discretion allow the prosecutor to exhibit evidence not included in the list given to the person accused, or may themselves call for new evidence; and in such case the person accused shall be entitled to have, if he demand it, an adjournment of the proceedings for three clear days, before the exhibition of such new evidence exclusive of the day of adjournment and of the day to which the proceedings are adjourned.

Power to admit or
call for new evidence
for prosecution.

Accused's right to
adjournment.

15. When the case for the prosecution is closed, the person accused shall be required to make his defence, orally or in writing, as he shall prefer. If made orally, it shall not be recorded; if made in writing, it shall be recorded, after being openly read, and in that case a copy shall be given at the same time to the prosecutor.

Defence of accused.
To be recorded only
when written.

16. The evidence for the defence shall then be exhibited, and the witnesses examined, who shall be liable to cross-examination and re-examination and to examination by the commissioners according to the like rules as the witnesses for the prosecution.

Evidence for
defence, and exami-
nation of witnesses.

17. [*Examination of witnesses and evidence by prosecutor.*] *Rep. by the Repealing Act, 1876 (XII of 1876).*

18. The commissioners or some person appointed by them shall take notes in English of all the oral evidence, which shall be read aloud to each witness by whom the same was given, and, if necessary, explained to him in the language in which it was given, and shall be recorded with the proceedings.

Notes of oral evi-
dence.

19. If the person accused makes only an oral defence, and exhibits no evidence, the inquiry shall end with his defence ; if he records a written defence, or exhibits evidence, the prosecutor shall be entitled to a general oral reply on the whole case, and may also exhibit evidence to contradict any evidence exhibited for the defence, in which case the person accused shall not be entitled to any adjournment of the proceedings, although such new evidence were not included in the list furnished to him.

Inquiry when closed with defence.
Prosecutor when entitled to reply and give evidence.
Accused not entitled to adjournment.

20. When the commissioners shall be of opinion that the articles of charge, or any of them, are not drawn with sufficient clearness and precision, the commissioners may, in their discretion, require the same to be amended, and may thereupon, on the application of the person accused, adjourn the inquiry for a reasonable time. The commissioners may also, if they think fit, adjourn the inquiry from time to time, on the application of either the prosecutor or the person accused, on the ground of sickness or unavoidable absence of any witness or other reasonable cause. When such application is made and refused, the commissioners shall record the application, and their reasons for refusing to comply with it.

Power to require amendment of charge and to adjourn.
The commissioners
Reasons for refusing adjournment to be recorded.

21. After the close of the inquiry the commissioners shall forthwith report to Government their proceedings under the commission, and shall send with the record thereof their opinion upon each of the articles of charge separately, with such observations as they think fit on the whole case.

Report of commissioners' proceedings.

22. The Government, on consideration of the report of the commissioners, may order them to take further evidence, or give further explanation of their opinions. It may also order additional articles of charge to be framed, in which case the inquiry into the truth of such additional articles shall be made in the same manner as is herein directed with respect to the original charges. When special commissioners have been appointed, the Government may also, if it think fit, refer the report of the commissioners to the Court or other authority to which the person accused is subordinate, for their opinion on the case ; and will finally pass such orders thereon as appear just and consistent with its powers in such cases.

Power to call for further evidence or explanation.
Inquiry into additional articles of charge.
Reference of report of special commissioners.
Final orders.

23. The powers of the Government under this Act may in all cases be exercised by the Governor General in Council, and when the person accused can be removed from his appointment by the Local Government, those powers may also be exercised by the Local Government.

Powers of Government under this Act by whom exercisable.

24. Nothing in this Act shall be construed to repeal any Act or Regulation in force for the suspension or dismissal of Principal and other Sadr Amins or of Deputy Magistrates or Deputy Collectors, but a commission may be issued for the trial of any charge against any of the said officers, under this Act, in any case in which the Government shall think it expedient.

Saving of enactments as to dismissal of certain officers.

Commission under Act for their trial.

Saving of power of removal without inquiry under Act.

25. Nothing in this Act shall be construed to affect the authority of Government, for suspending or removing any public servant for any cause without an inquiry under this Act.

THE INDIAN QUARANTINE ACT, 1870.

(ACT I OF 1870.)

[Passed on the 14th January, 1870.]

An Act to provide Rules relating to Quarantine.

WHEREAS it is expedient to empower expressly the Governor General of India in Council and the Local Governments to make rules relating to quarantine; It is hereby enacted as follows:—

Preamble.

1. It shall be lawful for the Governor General of India in Council and (with the previous sanction of the said Governor General in Council) for the Local Governments respectively, from time to time, to make rules—

Power to make quarantine rules.

for putting any vessel into a state of quarantine;

for regulating the intercourse of vessels in a state of quarantine with the shore, or with other vessels; and

for regulating the intercourse between ports where an infectious disease prevails and other ports.

Quarantine rules to be deemed rules under section 271 of Penal Code.

2. All such rules shall be published in the Gazette of India and also in the local Gazette, and shall thereupon be deemed to be rules made and promulgated under section 271 of the Indian Penal Code. XLV of 1860.

THE INDIAN RAILWAYS ACT, 1890.

(ACT IX OF 1890.)

[Passed on the 21st March, 1890.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1879	IV	Railways	... Rep., Act IX of 1890.
1883	IV	Do.	...
1886	XI	Do.	... S. 49 rep. by Act IX of 1890.
1890	IX	Railways	... Am., Act XI of 1896. " Act XIII of 1898.

An Act to consolidate, amend and add to the law relating to Railways in India.

WHEREAS it is expedient to consolidate, amend and add to the law relating to railways in India ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Title, extent and commencement.

1. (1) This Act may be called the Indian Railways Act, 1890.

XI of 1887.

(2) It extends to the whole of British India, inclusive [1] * * * (in so far as it has been or may be extended under the provisions of the Sindh-Pishin Railway Act, 1887), of British Baluchistan, and applies also to all subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty, and to all Native subjects of Her Majesty, without and beyond British India and those dominions ; and

(3) It shall come into force on the first day of May, 1890.

2. [2] (1) On and from that day the enactments specified in the first schedule are repealed to the extent mentioned in the third column thereof.

(2) But all rules, declarations and appointments made, sanctions and directions given, forms approved, powers conferred and notifications published under any of those enactments, or under any enactment repealed by any of them, shall, so far as they are consistent with this Act, be deemed to have been respectively made, given, approved, conferred and published under this Act.

(3) Any enactment or document referring to any of those enactments or to any enactment repealed by any of them, shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

XI of 1886.

(1) "tramway" means a tramway constructed under the Indian Tramways Act, 1886, or any special Act relating to tramways :

(2) "ferry" includes a bridge of boats, pontoons or rafts, a swing-bridge, a flying bridge and a temporary bridge, and the approaches to, and landing-places of, a ferry :

(3) "inland water" means any canal, river, lake or navigable water in British India :

(4) "railway" (a) means a railway, or any portion of a railway, for the public carriage of passengers, animals or goods, and includes—

(a) all land within the fences or other boundary-marks indicating the limits of the land appurtenant to a railway ;

(b) all lines of rails, sidings or branches worked over for the purposes of, or in connection with, a railway ;

Leg. Changes :—[1] Repealed by Burma Laws Act XIII of 1898. [2] So much of this section as relates to the repeal of part of Upper Burma Laws Act, 1886, has been repealed by Burma Laws Act, XIII of 1898.

Case-law :—(a) Meaning of the term, 36 P.R. 1911=9 Ind. Cas. 1011=102 P.W.R. 1911=116 P.L.R. 1911 ; staff quarters not part of railway, (1914) M.W.N. 124=15 Cr. L.J. 225=28 Ind. Cas. 177 ; excludes a carriage, 44 C. 279=25 O.L.J. 610.

- (c) all stations, offices, warehouses, wharves, work-shops, manufactories, fixed plant and machinery and other works constructed for the purposes of, or in connection with, a railway; and
- (d) all ferries, ships, boats and rafts which are used on inland waters for the purposes of the traffic of a railway and belong to or are hired or worked by the authority administering the railway :
- (5) " railway company " includes any persons, whether incorporated or not, who are owners or lessees of a railway or parties to an agreement for working a railway :
- (6) " railway administration (a) " or " administration," in the case of a railway administered by the Government or a Native State, means the manager of the railway and includes the Government or the Native State, and, in the case of a railway administered by a railway company, means the railway company :
- (7) " railway servant (b) " means any persons employed by a railway administration in connection with the service of a railway :
- (8) " Inspector " means an Inspector of Railways appointed under this Act :
- (9) " goods " includes (c) inanimate things of every kind :
- (10) " rolling-stock " includes locomotive engines, tenders, carriages, wagons, trucks and trollies of all kinds :
- (11) " traffic " (d) includes rolling-stock of every description, as well as passengers, animals (e) and goods :
- (12) " through traffic " means traffic which is carried over the railways of two or more railway administrations :
- (13) " rate " includes any fare, charge or other payment for the carriage of any passenger, animal or goods :
- (14) " terminals " includes charges in respect of stations, sidings, wharves, depots, warehouses, cranes and other similar matters, and of any services rendered thereat :
- (15) " pass " means an authority given by a railway administration, or by an officer appointed by a railway administration in this behalf, and authorizing the person to whom it is given to travel as a passenger on a railway gratuitously :
- (16) " ticket " includes a single ticket, a return ticket and a season ticket :
- (17) " maund " means a weight of three thousand two hundred tolas, each tola being a weight of one hundred and eighty grains Troy : and
- (18) " Collector " means the chief officer in charge of the land-revenue administration of a district, and includes any officer specially appointed by the Local Government to discharge the functions of a Collector under this Act.

Case-law :—(a) Definition, 4 O.C. 133. (b) Goods clerk, 9 P.R. 1898, Cr. (c) Meaning, 2 M. 5 ; 9 B.H.C. 95 ; 4 C. 492. (d) Meaning of the term, 36 P.R. 1911—9 Ind. Cas. 1011. (e) Crab, 24 C. 831.

CHAPTER II.

INSPECTION OF RAILWAYS.

Appointment and duties of Inspectors. 4. (1) The Governor General in Council may appoint persons, by name or by virtue of their office, to be Inspectors of Railways.

(2) The duties of an Inspector of Railways shall be—

- (a) to inspect railways with a view to determine whether they are fit to be opened for the public carriage of passengers, and to report thereon to the Governor General in Council as required by this Act ;
- (b) to make such periodical or other inspections of any railway or of any rolling-stock used thereon as the Governor General in Council may direct ;
- (c) to make inquiry under this Act into the cause of any accident on a railway ;
- (d) to perform such other duties as are imposed on him by this Act, or any other enactment for the time being in force relating to railways.

XLV of 1860

Powers of Inspectors. 5. An Inspector shall, for the purpose of any of the duties which he is required or authorized to perform under this Act, be deemed to be a public servant within the meaning of the Indian Penal Code, and, subject to the control of the Governor General in Council, shall for that purpose have the following powers, namely :—

- (a) to enter upon and inspect any railway or any rolling-stock used thereon ;
- (b) by an order in writing under his hand addressed to the railway administration, to require the attendance before him of any railway servant, and to require answers or returns to such inquiries as he thinks fit to make from such railway servant or from the railway administration ;
- (c) to require the production of any book or document belonging to or in the possession or control of any railway administration (except a communication between a railway company and its legal advisers) which it appears to him to be necessary to inspect.

Facilities to be afforded to Inspectors.

6. A railway administration shall afford to the Inspector all reasonable facilities for performing the duties and exercising the powers imposed and conferred upon him by this Act.

CHAPTER III.

CONSTRUCTION AND MAINTENANCE OF WORKS.

Fences, screens, gates and bars. 13. The Governor General in Council may require that, within a time to be specified in the requisition, or within such further time as he may appoint in this behalf,—

- (a) boundary-marks or fences be provided or renewed by a railway administration for a railway or any part thereof and for roads constructed in connection therewith ;

- (b) any works in the nature of a screen near to or adjoining the side of any public road constructed before the making of a railway be provided or renewed by a railway administration for the purpose of preventing danger to passengers on the road by reason of horses or other animals being frightened by the sight or noise of the rolling-stock moving on the railway ;
- (c) suitable gates, chains, bars, stiles or handrails be erected or renewed by a railway administration at places where a railway crosses a public road on the level ;
- (d) persons be employed by a railway administration to open and shut such gates, chains or bars.

CHAPTER IV.

OPENING OF RAILWAYS.

16. (1) A railway administration may, with the previous sanction of the Governor General in Council, use upon a railway locomotive engines ^(a) or other motive power, and rolling-stock to be drawn or propelled thereby.

(2) But rolling-stock shall not be moved upon a railway by steam or other motive power until such general rules for the railway as may be deemed to be necessary have been made, sanctioned and published under this Act.

Sanction of the Government a condition precedent to the opening of a railway.

18. A railway shall not be opened for the public carriage of passengers until the Governor General in Council, or an Inspector empowered by the Governor General in Council in this behalf, has by order sanctioned the opening thereof for that purpose.

19. (1) The sanction of the Governor General in Council under the last foregoing section shall not be given until an Inspector has, after inspection of the railway, reported in writing to the Governor General in Council—

Procedure in sanctioning the opening of a railway.

- (a) that he has made a careful inspection of the railway and rolling-stock ;
- (b) that the moving and fixed dimensions prescribed by the Governor General in Council have not been infringed ;
- (c) that the weight of rails, strength of bridges, general structural character of the works, and the size of and maximum gross load upon the axles of any rolling-stock, are such as have been prescribed by the Governor General in Council ;
- (d) that the railway is sufficiently supplied with rolling-stock ;
- (e) that general rules for the working of the railway when opened for the public carriage of passengers have been made, sanctioned and published under this Act ; and
- (f) that, in his opinion, the railway can be opened for the public carriage of passengers without danger to the public using it.

(2) If in the opinion of the Inspector the railway cannot be so opened without danger to the public using it, he shall state that opinion,

Case-law :—(a) Liability for damage caused by spark from engines, 14 B.L.R. 1.

together with the grounds therefor, to the Governor General in Council, and the Governor General in Council may thereupon order the railway administration to postpone the opening of the railway.

(3) An order under the last foregoing sub-section must set forth the requirements to be complied with as a condition precedent to the opening of the railway being sanctioned, and shall direct the postponement of the opening of the railway until those requirements have been complied with or the Governor General in Council is otherwise satisfied that the railway can be opened without danger to the public using it.

(4) The sanction given under this section may be either absolute or subject to such conditions as the Governor General in Council thinks necessary for the safety of the public.

(5) When sanction for the opening of a railway is given subject to conditions, and the railway administration fails to fulfil those conditions, the sanction shall be deemed to be void and the railway shall not be worked or used until the conditions are fulfilled to the satisfaction of the Governor General in Council.

20. (1) The provisions of sections 17, 18 and 19 with respect to the opening of a railway shall extend to the opening of the works mentioned in sub-section (2) when those works form part of, or are directly connected with, a railway used for the public carriage of passengers and have been constructed after the inspection which preceded the first opening of the railway.

Application of the provisions of the three last foregoing sections to material alterations of a railway.

(2) The works referred to in sub-section (1) are additional lines of railway, deviation lines, stations, junctions and crossings on the level, and any alteration or re-construction materially affecting the structural character of any work to which the provisions of sections 17, 18 and 19 apply or are extended by this section.

21. When an accident has occurred resulting in a temporary suspension of traffic, and either the original line and works have been rapidly restored to their original standard, or a temporary diversion has been laid for the purpose of restoring communication, the original line and works so restored, or the temporary diversion, as the case may be, may, in the absence of the Inspector, be opened for the public carriage of passengers, subject to the following conditions, namely :—

Exceptional provision.

- (a) that the railway servant in charge of the works undertaken by reason of the accident has certified in writing that the opening of the restored line and works, or of the temporary diversion, will not in his opinion be attended with danger to the public using the line and works or the diversion ; and
- (b) that notice by telegraph of the opening of the line and works or the diversion shall be sent, as soon as may be, to the Inspector appointed for the railway.

Power to make rules with respect to the opening of railways.

22. The Governor General in Council may make rules defining the cases in which, and in those cases the extent to which, the procedure prescribed in sections 17 to 20 (both inclusive) may be dispensed with.

24. (1) When a railway has been closed under the last foregoing section, it shall not be re-opened for the public carriage of passengers until it has been inspected and its re-opening sanctioned, in accordance with the provisions of this Act.

(2) When the Governor General in Council has ordered under the last foregoing section that the use of any specified rolling-stock be discontinued, that rolling-stock shall not be used until an Inspector has reported that it is fit for use and the Governor General in Council has sanctioned its use.

(3) When the Governor General in Council has imposed under the last foregoing section any conditions with respect to the use of any railway or rolling-stock, those conditions shall be observed until they are withdrawn by the Governor General in Council.

CHAPTER V.

RAILWAY COMMISSIONS AND TRAFFIC FACILITIES.

Railway Commissions.

36. (1) The Court of which the Law Commissioner was a Judge may, if it appears on the application of any person who was a party to the proceedings before the Commissioners or on appeal before the High Court, or of the representative of any such person, that an injunction made under this Chapter by the Commissioners or by a High Court has not been obeyed by the party enjoined, order such party to pay a sum not exceeding one thousand rupees for every day during which the injunction is disobeyed after the date of the order directing such payment.

(2) The payment of such sum may be enforced by the Court which made the order as if that Court had given a decree for the same, and the Court may direct that the whole or any part of the sum shall be paid to the person making the application under sub-section (1) or to the Government.

CHAPTER VI.

WORKING OF RAILWAYS.

General.

47. (1) Every railway company and, in the case of a railway administered by the Government, an officer to be appointed by the Governor General in Council in this behalf, shall make general rules ^(a) consistent with this Act for the following purposes, namely:—

(a) for regulating the mode in which, and the speed at which, rolling-stock used on the railway is to be moved or propelled ^(b);

Case-law :—(a) Scope and nature, 11 C.W.N. 583 = 5 Or. L.J. 463 (15 Cr. L.J. 463 = 24 Ind. Cas. 349 = 4 P.R. 1914, Cr., R.); 8 W.R. 43, Cr.; e.g., to secure the safety of a train by requiring the guard in charge to see to the particular pair of points which lead into the line occupied by his train, 12 Bom. L.R. 930 = 8 Ind. Cas. 134. (b) Guard's duty in case of accident, 8 W.R. 43, Cr.

- (b) for providing for the accommodation and convenience of passengers and regulating the carriage of their luggage ;
- (c) for declaring what shall be deemed to be, for the purposes of this Act, dangerous or offensive goods, and for regulating the carriage of such goods ;
- (d) for regulating the conditions on which the railway administration will carry passengers suffering from infectious or contagious disorders, and providing for the disinfection of carriages which have been used by such passengers ;
- (e) for regulating the conduct of the railway servants ;
- (f) for regulating the terms and conditions on which the railway administration will warehouse or retain goods at any station on behalf of the consignee or owner ; and
- (g) generally, for regulating the travelling upon, and the use, working and management of, the railway.

(2) The rules (a) may provide that any person committing a breach of any of them shall be punished with fine which may extend to any sum not exceeding fifty rupees, and that in the case of a rule made under clause (e) of sub-section (1), the railway servants shall forfeit a sum not exceeding one month's pay, which sum may be deducted by the railway administration from his pay.

(3) A rule made under this section shall not take effect until it has received the sanction of the Governor General in Council and been published in the Gazette of India :

Provided that, where the rule is in the terms of a rule which has already been published at length in the Gazette of India, a notification in that Gazette, referring to the rule already published and announcing the adoption thereof, shall be deemed a publication of a rule in the Gazette of India within the meaning of this sub-section.

(4) The Governor General in Council may cancel any rule made under this section, and the authority required by sub-section (1) to make rules thereunder may at any time, with the previous sanction of the Governor General in Council, rescind or vary any such rule.

IV of 1879. (5) Every rule purporting to have been made for any railway under section 8 of the Indian Railways Act, 1879, and appearing from the Gazette of India to be intended to apply to the railway at the commencement of this Act, shall, notwithstanding any irregularity in the making or publication of the rule, be deemed to have been made and to have taken effect under this section.

(6) Every railway administration shall keep at each station on its railway a copy of the general rules for the time being in force under this section on the railway, and shall allow any person to inspect it free of charge at all reasonable times.

Case-law :—(a) Do not create criminal offence, 11 C.W.N. 588 ; do not render entry by persons not *bona fide* passengers unlawful, 1 S.L.R. 91 ; meaning of " day " in r. 74, N.W. Coaching Tariff Rules, 8 S.L.R. 14 = 25 Ind. Cas. 801 ; railway ticket not used on day of issue, 1 Weir 870.

48. Where two or more railway administrations whose railways

Disposal of differences between railways regarding conduct of joint traffic.

have a common terminus or a portion of the same line of rails in common, or form separate portions of one continued line of railway communication, are not able to agree upon arrangements for conducting at such common terminus, or at the point of junction between

them, their joint traffic with safety to the public, the Governor General in Council, upon the application of either or any of the administrations, may decide the matters in dispute between them, so far as those matters relate to the safety of the public, and may determine whether the whole or what proportion of the expenses attending on such arrangements shall be borne by either or any of the administrations respectively.

52. Every railway administration shall, in forms to be prescribed

Returns.

by the Governor General in Council, prepare, half-yearly or at such intervals as the Governor General in

Council may prescribe, such returns of its capital and revenue transactions and of its traffic as the Governor General in Council may require, and shall forward a copy of such returns to the Governor General in Council at such times as he may direct.

54. (1) Subject to the control of the Governor General in Council,

Power for railway administrations to impose conditions for working traffic.

a railway administration may impose conditions, not inconsistent with this Act or with any general rule thereunder, with respect to the receiving, forwarding or delivering of any animals or goods.

(2) The railway administration shall keep at each station on its railway a copy of the conditions for the time being in force under subsection (1) at the station, and shall allow any person to inspect it free of charge at all reasonable times.

(3) A railway administration shall not be bound to carry any animal suffering from any infectious or contagious disorder.

58. (1) The owner or person having charge of any goods which are

Requisitions for written accounts of description of goods.

brought upon a railway for the purpose of being carried thereon, and the consignee of any goods which have been carried on a railway, shall, on the request of any railway servant appointed in this behalf by the rail-

way administration, deliver to such servant an account in writing signed by such owner or person, or by such consignee, as the case may be, and containing such a description of the goods as may be sufficient to determine the rate which the railway administration is entitled to charge in respect thereof.

(2) If such owner, person or consignee refuses or neglects to give such an account, and refuses to open the parcel or package containing the goods in order that their description may be ascertained, the railway administration may, (a) in respect of goods which have been brought for the purpose of being carried on the railway, refuse to carry the goods unless in respect thereof a rate is paid not exceeding the highest rate which may be in force at the time on the railway for any class of goods or, (b) in respect of goods which have been carried on the railway, charge a rate not exceeding such highest rate.

(3) If an account delivered under sub-section (1) is materially false with respect to the description of any goods to which it purports to relate, and which have been carried on the railway, the railway administration may charge in respect of the carriage of the goods a rate not exceeding double the highest rate which may be in force at the time on the railway for any class of goods.

(4) If any difference arises between a railway servant and the owner or person having charge, or the consignee, of any goods which have been brought to be carried or have been carried on a railway, respecting the description of goods of which an account has been delivered under this section, the railway servant may detain and examine the goods.

(5) If it appears from the examination that the description of the goods is different from that stated in an account delivered under sub-section (1), the person who delivered the account, or, if that person is not the owner of the goods, then that person and the owner jointly and severally, shall be liable to pay to the railway administration the cost of the detention and examination of the goods, and the railway administration shall be exonerated from all responsibility for any loss which may have been caused by the detention or examination thereof.

(6) If it appears that the description of the goods is not different from that stated in an account delivered under sub-section (1), the railway administration shall pay the cost of the detention and examination, and be responsible to the owner of the goods for any such loss as aforesaid.

Dangerous or offensive goods. 59. (1) No person shall be entitled to take with him, or to require a railway administration to carry, any dangerous or offensive goods^(a) upon a railway.

(2) No person shall take any such goods with him upon a railway without giving notice of their nature to the station-master or other railway servant in charge of the place where he brings the goods upon the railway, or shall tender or deliver any such goods for carriage upon a railway without distinctly marking their nature on the outside of the package containing them or otherwise giving notice in writing of their nature to the railway servant to whom he tenders or delivers them.

(3) Any railway servant may refuse to receive such goods for carriage, and, when such goods have been so received without such notice as is mentioned in [4] sub-section (2)^[1] having to his knowledge been given, may refuse to carry them or may stop their transit.

(4) If any railway servant has reason to believe any such goods to be contained in a package with respect to the contents whereof such notice as is mentioned in sub-section (2) has not to his knowledge been given, he may cause the package to be opened for the purpose of ascertaining its contents.

(5) Nothing in this section shall be construed to derogate from the Indian Explosives Act, 1884, or any rule under that Act, and nothing in
' of 1884.

Leg. Changes:—[1] Substituted by Act IX of 1896.

Case-law:—(a) Fireworks whether dangerous, 26 O. 465; liability of person not giving notice of box containing explosives, 1 A. 60 (F.B.).

sub-sections (1), (3) and (4) shall be construed to apply to any goods tendered or delivered for carriage by order or on behalf of the Government or to any goods which an officer, soldier, sailor or police-officer or a person enrolled as a volunteer under the Indian Volunteers Act, 1869, may take ^{XX of 1869.} with him upon a railway in the course of his employment or duty as such.

60. At every station at which a railway administration quotes a rate to any other station for the carriage of traffic other than passengers and their luggage, the railway servant appointed by the administration to quote the rate shall, at the request of any person, show to him at all reasonable times, and without payment of any fee, the rate books or other documents in which the rate is authorized by the administration or administrations concerned.

Exhibition to the public of authority for quoted rates.

Carriage of Passengers.

62. The Governor General in Council may require any railway administration to provide and maintain in proper order, in any train worked by it which carries passengers, such efficient means of communication between the passengers and the railway servants in charge of the train as the Governor General in Council has approved.

Communication between passengers and railway servants in charge of trains.

63. Every railway administration shall fix, subject to the approval of the Governor General in Council, the maximum number of passengers which may be carried in each compartment of every description of carriage, and shall exhibit the number so fixed in a conspicuous manner inside or outside each compartment, in English or in one or more of the vernacular languages in common use in the territory traversed by the railway, or both in English and in one or more of such vernacular languages as the Governor General in Council, after consultation with the railway administration, may determine.

Maximum number of passengers for each compartment.

64. (1) On and after the first day of January, 1891, every railway administration shall, in every train carrying passengers, reserve for the exclusive use of females one compartment at least of the lowest class of carriage forming part of the train.

Reservation of compartments for females.

(2) One such compartment so reserved shall, if the train is to run for a distance exceeding fifty miles, be provided with a closet.

65. Every railway administration shall cause to be posted in a conspicuous and accessible place at every station on its railway, in English and in a vernacular language in common use in the territory where the station is situate, a copy of the time-tables for the time being in force on the railway, and lists of the fares chargeable for travelling from the station where the lists are posted to every place for which card-tickets are ordinarily issued to passengers at that station.

Exhibition of time-tables and tables of fares at stations.

**Prohibition
against travelling
without pass or
ticket.**

68. (a) No person shall, without the permission of a railway servant, enter any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket (b).

**Exhibition and
surrender of passes
and tickets.**

69. (c) Every passenger by railway shall, on the requisition of any railway servant appointed by the railway administration in this behalf, present his pass or ticket to the railway servant for examination, and at or near the end of the journey for which the pass or ticket was issued, or, in the case of a season pass or ticket, at the expiration of the period for which it is current, deliver up the pass or ticket to the railway servant.

**Return and sea-
son tickets.**

70. A return ticket or season ticket shall not be transferable and may be used only by the person for whose journey to and from the places specified thereon it was issued (d).

**Power to refuse to
carry person suffer-
ing from infectious
or contagious dis-
order.**

71. (1) A railway administration may refuse to carry, except in accordance with the conditions prescribed under section 47, sub-section (1), clause (d), a person suffering from any infectious or contagious disorder.

(2) A person suffering from such a disorder shall not enter or travel upon a railway without the special permission of the station-master or other railway servant in charge of the place where he enters upon the railway.

(3) A railway servant giving such permission as is mentioned in sub-section (2) must arrange for the separation of the person suffering from the disorder from other persons being or travelling upon the railway.

CHAPTER VIII.

ACCIDENTS.

**Report of railway
accidents.**

83. When any of the following accidents occur in the course of working a railway, namely :—

- (a)** any accident attended with loss of human life, or with grievous hurt as defined in the Indian Penal Code, or with serious injury to property ;
- (b)** any collision between trains of which one is a train carrying passengers ;
- (c)** the derailment of any train carrying passengers or of any part of such a train ;

XLV of 1860.

Case-law :—(a) Main purpose of, 44 C. 279=25 C.L.J. 610; see 11 C.W.N. 100=4 Cr. L.J. 489=5 C.L.J. 47. (b) Meaning of "proper," 9 O.P.L.R. 1, Cr.; travelling without ticket and without intent to defraud not offence, 44 C. 279=25 C.L.J. 610; (1 B. 59, D); see 17 Cr. L.J. 361=35 Ind. Cas. 665; one used not on day of issue not proper, 1 B. 59; see 1 Weir 870. (c) Main and primary purpose of, 44 C. 279=25 O.L.J. 610. (d) Application, 1 Weir 872; sale or transfer of single ticket neither prohibited nor penal, *ibid*.

- (d) any accident of a description usually attended with loss of human life or with such grievous hurt as aforesaid or with serious injury to property ;
- (e) any accident of any other description which the Governor General in Council may notify in this behalf in the Gazette of India ;

the railway administration working the railway and, if the accident happens to a train belonging to any other railway administration, the other railway administration also shall, without unnecessary delay, send notice of the accident to the Local Government and to the Inspector appointed for the railway ; and the station-master nearest to the place at which the accident occurred or, where there is no station-master, the railway servant in charge of the section of the railway on which the accident occurred shall, without unnecessary delay, give notice of the accident to the Magistrate of the district in which the accident occurred, and to the officer in charge of the police-station within the local limits of which it occurred, or to such other Magistrate and police-officer as the Governor General in Council appoints in this behalf.

Power to make rules regarding notices of, and enquiries into, accidents.

84. The Governor General in Council may make rules, consistent with this Act and any other enactment for the time being in force for all or any of the following purposes, namely :—

- (a) for prescribing the forms of the notices mentioned in the last foregoing section, and the particulars of the accident which those notices are to contain ;
- (b) for prescribing the class of accidents of which notice is to be sent by telegraph immediately after the accident has occurred ;
- (c) for prescribing the duties of railway servants, police-officers, Inspectors and Magistrates on the occurrence of an accident.

85. Every railway administration shall send to the Governor General in Council a return of accidents occurring upon its railway, whether attended with personal injury or not in such form and manner and at such intervals of time as the Governor General in Council directs.

Submission of return of accidents.

CHAPTER IX.

PENALTIES (a) AND OFFENCES.

Forfeitures by Railway Companies.

Penalty for default in compliance with requisition under section 13.

87. If a railway company fails to comply with any requisition made under section 13, it shall forfeit to the Government the sum of two hundred rupees for the default and a further sum of fifty rupees for every day after the first during which the default continues.

Penalty for contravention of section 16, 18, 19, 20, 21 or 24.

88. If a railway company moves any rolling-stock upon a railway by steam or other motive power in contravention of section 16, sub-section (2), or opens or uses any railway or work in contravention of

Case-law :—(a) Nature, 11 C.W.N. 100; scope of chapter, 11 C.W.N. 583=5 C. L.J. 47=4 Cr. L.J. 439.

section 18, section 19, section 20 or section 21, or re-opens any railway or uses any rolling-stock in contravention of section 24, it shall forfeit to the Government the sum of two hundred rupees for every day during which the motive power, railway, work or rolling-stock is used in contravention of any of those sections.

Penalty for not having certain documents kept or exhibited at stations under section 47, 54 or 65.

89. If a railway company fails to comply with the provisions of section 47, sub-section (6), section 54, sub-section (2), or section 65, with respect to the books or other documents to be kept open to inspection or conspicuously posted at stations on its railway, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues.

Penalty for not making rules as required by section 47.

90. If the railway company fails to comply with the provisions of section 47 with respect to the making of general rules, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues.

Penalty for failure to comply with decision under section 48.

91. If a railway company refuses or neglects to comply with any decision of the Governor General in Council under section 48, it shall forfeit to the Government the sum of two hundred rupees for every day during which the refusal or neglect continues.

Penalty for delay in submitting returns under section 52 or 85.

92. If a railway company fails to comply with the provisions of section 52 or section 85 with respect to the submission of any return, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues after the fourteenth day from the date prescribed for the submission of the return.

Penalty for neglect of provisions of section 53 or 63 with respect to carrying capacity of rolling-stock.

93. If a railway company contravenes the provisions of section 53 or section 63, with respect to the maximum load to be carried in any wagon or truck, or the maximum number of passengers to be carried in any compartment, or the exhibition of such load on the wagon or truck or of such number in or on the compartment, or knowingly suffers any person owning a wagon or truck passing over its railway to contravene the provisions of the former of those sections, it shall forfeit to the Government the sum of twenty rupees for every day during which either section is contravened.

Penalty for failure to comply with requisition under section 62 for maintenance of means of communication between passengers and railway servants.

94. If a railway company fails to comply with any requisition of the Governor General in Council under section 62 for the provision and maintenance in proper order, in any train worked by it, which carries passengers, of such efficient means of communication as the Governor General in Council has approved, it shall forfeit to the Government the sum of twenty rupees for each train run in disregard of the requisition.

95 If a railway company fails to comply with the requirements of section 64 with respect to the reservation of compartments for females or the provision of closets therein, it shall forfeit to the Government the sum of twenty rupees for every train in respect of which the default occurs.

Penalty for failure to reserve compartments for females under section 64.

Penalty for omitting to give the notices of accidents required by section 83 and under section 84.

96. If a railway company omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, it shall forfeit to the Government the sum of one hundred rupees for every day during which the omission continues.

97. (1) When a railway company has through any act or omission forfeited any sum to the Government under the foregoing provisions of this Chapter, the sum shall be recoverable by suit in the District Court having

Recovery of penalties.

jurisdiction in the place where the act or omission or any part thereof occurred.

(2) The suit must be instituted with the previous sanction of the Governor General in Council, and the plaintiff therein shall be the Secretary of State for India in Council.

(3) The Governor General in Council may remit the whole or any part of any sum forfeited by a railway company to the Government under the foregoing provisions of this Chapter.

Alternative or supplementary character of remedies afforded by the foregoing provisions of this Chapter.

98. Nothing in those provisions shall be construed to preclude the Government from resorting to any other mode of proceedings instead of, or in addition to, such a suit as is mentioned in the last foregoing section, for the purpose of compelling a railway company to discharge any obligation imposed upon it by this Act.

Offences by Railway Servants (a).

Breach of duty imposed by section 60.

99. If a railway servant whose duty it is to comply with the provisions of section 60 negligently or wilfully omits to comply therewith, he shall be punished with fine which may extend to twenty rupees.

100. If a railway servant is in a state of intoxication while on duty, he shall be punished (c) with fine which may extend to fifty rupees, or, where the improper performance of the duty would be likely to endanger the safety of any person travelling or being upon a railway, with imprisonment for a term which may extend to one year, or with fine or with both.

Drunkenness (b).

Case-law.—(a) Company liable for torts of, 13 M. 34. (b) On duty as offence, 1 M.H.C. 193. (c) Procedure in warrant case as regards latter part, 5 M.L.T. 204; trial for offence under first part and conviction for one under latter part illegal, *ibid.*

Endangering the safety of persons.

101. (a) If a railway servant, when on duty, endangers^(b) the safety of any person—

(a) by disobeying any general rule made, sanctioned, published and notified under this Act, or

(b) by disobeying any rule^(c) or order which is not inconsistent with any such general rule, and which such servant was bound by the terms of his employment to obey, and of which he had notice, or

(c) by any rash or negligent act or omission,

he shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to five hundred rupees, or with both.

102. If a railway servant compels or attempts to compel, or causes, any passenger^(d) to enter a compartment which already contains the maximum number of passengers exhibited therein or thereon under section 63, he shall be punished with fine which may extend to twenty rupees.

Compelling passengers to enter carriages already full.

103. If a station-master or a railway servant in charge of a section of a railway omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, he shall be punished with fine which may extend to fifty rupees.

Omission to give notice of accident.

Obstructing level-crossings.

104. If a railway servant unnecessarily—

(a) allows any rolling-stock to stand across a place where the railway crosses a public road on the level, or

(b) keeps a level-crossing closed against the public,

he shall be punished with fine which may extend to twenty rupees.

105. If any return which is required by this Act is false in any particular to the knowledge of any person who signs it, that person shall be punished with fine which may extend to five hundred rupees, or with imprisonment which may extend to one year, or with both.

False returns.

Case-law :—(a) Gist of offences, 11 C.W.N. 173=5 Cr. L.J. 16; 13 N.L.R. 90; 9 P.L.R. 1910=11 Cr. L.J. 362=6 Ind. Cas. 483; 4 L.B.R. 139, 4 L.B.R. 350=9 Cr. L.J. 352; 15 Cr. L.J. 17=7 L.B.R. 72=22 Ind. Cas. 161=7 Bur. L.T. 101; procedure, 1 Pat. L.J. 373. (b) Liability to punishment depends upon risk of danger, 6 M. 201; there must be actual danger to a person's safety, 8 P.L.R. 1910=6 Ind. Cas. 483=11 Cr. L.J. 362; and not a mere likelihood of danger, 7 L.B.R. 72; 4 L.B.R. 353; what is danger, 13 P.R. 1906, Cr.=59 P.L.R. 1907=5 Cr. L.J. 81; e.g., when gateman is asleep, 9 P.R. 1892, Cr.; 1 Weir 868; starting engine without whistling, Rat. Un. Cr. C. 721; station-master's negligence, 11 C.W.N. 173; station-master cannot be convicted if unfinished "line clear" ticket is torn off by guard and taken by latter, 34 C. 73=8 C.W.N. 645; guard not liable for not seeing main line points when he was responsible for seeing only loop line points, 8 Ind. Cas. 134; driver running train at full speed with danger signals against him, 1 Weir 859; sanction for complaint, 9 P.R. 1892, Cr. (c) Valid, if not inconsistent with Act, though not made under S. 47, 8 Ind. Cas. 134; disobedience of rule requiring guard to place detonators for protection of trains standing outside distant signal, 14 Cr. L.J. 676=21 Ind. Cas. 996; other instances, 37 B. 685=15 Bom. L.R. 702=2 Bom. Cr. Cas. 109=14 Cr. L.J. 460=20 Ind. Cas. 620. (d) Ticket-holder is, 26 P.R. 1910, Cr.=31 P.W.R. 1910, Cr.=7 Ind. Cas. 355=11 Cr. L.J. 451=200 P.L.R. 1910.

Other Offences.

106. (a) If a person requested under section 58 to give an account with respect to any goods gives an account which is materially false^(b) he and, if he is not the owner of the goods, the owner also shall be punished with fine which may extend to ten rupees for every maund or part of a maund of the goods, and the fine shall be in addition to any rate or other charge to which the goods may be liable.

107. If in contravention of section 59 a person takes with him any dangerous or offensive goods^(c) upon a railway, or tenders or delivers, any such goods for carriage upon a railway, he shall be punished with fine which may extend to five hundred rupees, and shall also be responsible for any loss, injury, or damage which may be caused by reason of such goods having been so brought upon the railway.

108. If a passenger^(d) without reasonable and sufficient cause makes use of or interferes with any means provided by a railway administration for communication between passengers and the railway servants in charge of a train, he shall be punished with fine which may extend to fifty rupees.

109. (1) If a passenger having entered a compartment which is reserved by a railway administration for the use^(e) of another passenger, or which already contains the maximum number of passengers exhibited therein or thereon under section 63, refuses^(f) to leave it when required to do so by any railway servant, he shall be punished with fine which may extend to twenty rupees.

(2) If a passenger resists^(g) the lawful entry of another passenger into a compartment not reserved by the railway administration for the use of the passenger resisting or not already containing the maximum number of passengers exhibited therein or thereon under section 63, he shall be punished with fine which may extend to twenty rupees.

110. (h) (1) If a person, without the consent of his fellow-passengers, if any, in the same compartment⁽ⁱ⁾ smokes in any compartment except a compartment specially provided for the purpose, he shall be punished with fine which may extend to twenty rupees.

Case-law:—(a) Scope, 36 P.R. 1885, Cr. (b) *E.g.*, declaration of fireworks to be locks, 24 P.L.R. 1906. (c) Railway Company not bound to search passengers' luggage for dangerous or offensive goods, 28 C. 401 (P.C.)=28 I.A. 144; see 24 P.L.R. 1905=2 Cr. L.J. 207=22 P.R. 1906, Cr.; 7 P.R. 1900, Cr. (d) Ticket-holder is, 31 P.W.R. 1910, Cr.=7 Ind. Cas. 354=11 Cr. L.J. 451=26 P.R. 1910, Cr.=200 P.L.R. 1910 (7 P.R. 1900, Cr., *F.*). (e) But does not include a compartment reserved for Europeans, 5 S.L.R. 140. (f) Refusal to leave compartment reserved for Europeans is not an offence, *ibid.* (g) *E.g.*, preventing passengers from entering in and standing against door is offence, 31 P.W.R. 1910, Cr.=7 Ind. Cas. 365=11 Cr. L.J. 451=26 P.R. 1910, Cr.=200 P.L.R. 1910. (h) Purpose of section to prevent annoyance to fellow-passengers, 24 B. 293=1 Bom. L.R. 688. (i) Not defined, *ibid.*; division of railway carriage, separated from the other division by partition right up to the roof of the carriage, *ibid.*

(2) If any person persists in so smoking after being warned by any railway servant to desist, he may, in addition to incurring the liability mentioned in sub-section (1), be removed by any railway servant from the carriage in which he is travelling.

111. If a person, without authority in this behalf, pulls down or wilfully injures any board or document set up or posted by order of a railway administration on a railway or any rolling-stock, or obliterates or alters any of the letters or figures upon any such board or document, he shall be punished with fine which may extend to fifty rupees.

Defacing public notices.
Fraudulently travelling or attempting to travel without proper pass or ticket.

112. (a) If a person, with intent to defraud a railway administration,—

(a) enters in contravention of section 68 (b) any carriage on a railway, or

(b) uses or attempts to use a single pass or single ticket which has already been used on a previous journey or, in the case of a return ticket (c) a half thereof which has already been so used, he shall be punished with fine which may extend to one hundred rupees in addition to the amount of the single fare for any distance which he may have travelled.

113. (1) If a passenger travels in a train without having a proper pass or a proper ticket (d) with him or, being in or having alighted from a train, fails or refuses to present (e) for examination or to deliver up his pass or ticket immediately on requisition being made therefor under section 69, he shall be liable to pay, on the demand of any railway servant appointed by the railway administration in this behalf, the excess charge hereinafter in this section mentioned, in addition to the ordinary single fare for the distance which he has travelled or, where there is any doubt as to the station from which he started, the ordinary single fare from the station from which the train originally started, or if the tickets or passengers

Case-law :—(a) Construction of section, 11 C.W.N. 100=5 C.L.J. 47; railway fare and fine, 17 C.P.L.R. 32. (b) Intent to defraud essence of offence, 17 Cr. L.J. 351=35 Ind. Cas. 665; entry in contravention of S. 68, 1 Weir 870; fraudulent entry without ticket is not punishable under this section, 27 P.R. 1905, Cr.=124 P.L.R. 1905; travelling with false ticket, offence under cl. (a), 11 C.W.N. 100=5 C.L.J. 47=4 Cr. L.J. 489; father travelling with son aged 6 years, without paying latter's fare is abettor, 1 Weir 869 (F.B.); entry into train and travelling therein without ticket, not distinct and separate offence, 11 C.W.N. 100; as to travelling with a forged pass, see 21 M.L.J. 748=11 Ind. Cas. 590. (c) Buying unused half of, not in itself an offence, Rat. Un. Cr. C. 123; e.g., 1 Weir 871; travelling beyond place of ticket not coming under section, 9 C.P.L.R. 1, Cr.; nor travelling in higher class, 1 Bom. H.C. 140; as to travelling with an old pass, see 7 P.R. 1868. (d) Scope of, 44 C. 279=25 C.L.J. 610; 18 B. 440; 20 M. 885=1 Weir 871; intentionally travelling beyond place of ticket, 9 O.P.L.R. 1, Cr. (e) Every passenger including season ticket holder, bound to present ticket, 12 C. 192; excess charge and fare how recoverable, 1 Bom. L.R. 186 (18 B. 440; 20 M. 1; 10 Cr. L.J. 519=4 Ind. Cas. 286=5 N.L.R. 151, F.); not a fine though recovered as such, 18 B. 440; 20 M. 885; procedure, L.B.R. (1872-1892) 606; applicability of S. 64, I.P.C., Rat. Un. Cr. C. 871.

travelling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were examined or, in case of their having been examined more than once, were last examined.

(2) If a passenger travels or attempts to travel in or on a carriage, or by a train, of a higher class than that for which he has obtained a pass or purchased a ticket, or travels in or on a carriage beyond the place authorized by his pass or ticket, he shall be liable to pay, on the demand of any railway servant appointed by the railway administration in this behalf, the excess charge hereinafter in this section mentioned, in addition to any difference between any fare paid by him and the fare payable in respect of such journey as he has made.

(3) The excess charge referred to in sub-section (1) and sub-section (2) shall,—

(a) where the passenger has immediately after incurring the charge and before being detected by a railway servant notified to the railway servant on duty with the train the fact of the charge having been incurred, be one rupee, two annas or eight annas, and

(b) in any other case, be six rupees, one rupee or three rupees, according as the passenger is travelling or has travelled or has attempted to travel in a carriage of the highest class or in a carriage of the lowest class or in a carriage of any other class or kind :

Provided that such excess charge shall in no case exceed,—

(a) where the liability to pay it arises under sub-section (1), the amount of the ordinary single fare which the passenger incurring the charge is liable to pay under that sub-section, or

(b) where such liability arises under sub-section (2), the amount of the difference between the fare paid by the passenger incurring the charge and the fare payable in respect of such journey as he has made.

(4) If a passenger liable to pay the excess charge and fare mentioned in sub-section (1), or the excess charge and any difference of fare mentioned in sub-section (2), fails or refuses to pay the same on demand being made therefor under one or other of those sub-sections, as the case may be, the sum payable by him shall, on application made to any Magistrate by any railway servant appointed by the railway administration in this behalf, be recovered by the Magistrate from the passenger as if it were a fine (a) imposed on the passenger by the Magistrate and shall, as it is recovered, be paid to the railway administration.

114. If a person sells or attempts to sell, or parts or attempts to part with the possession of [1] any half [1] of a return ticket in order to enable any other person to travel therewith, or purchase such half of a return ticket, he shall be punished with fine which may extend to fifty

Transferring any
half of return
ticket (b).

Leg. Changes :—[1] Substituted by Act IX of 1896.

Case-law :—(a) A person cannot be sentenced to imprisonment in default of payment of fine, 20 A. 95 ; 11 O.W.N. 100 ; Magistrate's order open to revision, 13 P.R. 1891. Or. ; application of S. 31, Court Fees Act, U.B.R. (1892—1896), Vol. I, 300.
(b) Sale or transfer of single ticket, neither prohibited nor penal, 1 Weir 872.

rupees, and, if the purchaser of such half of a return ticket travels or attempts to travel therewith, he shall be punished with an additional fine which may extend to the amount of the single fare for [1] the journey [1] authorized by the ticket.

115. That portion of any fine imposed under section 112 or the last foregoing section which represents the single fare therein mentioned shall, as the fine is recovered, be paid to the railway administration before any portion of the fine is credited to the Government.

Disposal of fines under the two last foregoing sections.

116. If a passenger wilfully alters or defaces his pass or ticket so as to render the date, number or any material portion thereof illegible, he shall be punished with fine which may extend to fifty rupees.

Altering or defacing pass or ticket.

117. (1) If a person suffering from an infectious or contagious disorder enters or travels upon a railway in contravention of section 71, sub-section (2), he, and any person having charge of him upon the railway when he so entered or travelled thereon, shall be punished with fine which may extend to twenty rupees, in addition to the forfeiture of any fare which either of them may have paid, and of any pass or ticket which either of them may have obtained or purchased, and may be removed from the railway by any railway servant.

Being or suffering person to travel on railway with infectious or contagious disorder.

(2) If any such railway servant as is referred to in section 71, sub-section (2), knowing that a person is suffering from any infectious or contagious disorder, wilfully permits the person to travel upon a railway without arranging for his separation from other passengers, he shall be punished with fine which may extend to one hundred rupees.

118. (1) If a passenger (a) enters or leaves, or attempts to enter or leave, any carriage while the train is in motion, or elsewhere than at the side of the carriage adjoining the platform or other place appointed by the railway administration for passengers to enter or leave the carriage, or opens the side-door of any carriage while the train is in motion, he shall be punished with fine which may extend to twenty rupees.

Entering carriage in motion, or otherwise improperly travelling on a railway.

(2) If a passenger, after being warned (b) by a railway servant to desist, persists in travelling on the roof, steps or footboard of any carriage or on an engine, or in any other part of a train not intended for the use of passengers, he shall be punished with fine which may extend to fifty rupees and may be removed from the railway by any railway servant.

Leg. Changes :—[1] Substituted by Act IX of 1896.

Case law :—(a) Fruit-seller on platform is not punishable under this section, 1 Weir 873; nor a sweet seller on the footboard of a train, 15 Bom. L.R. 996=21 Ind. Cas. 894=2 Bom. Cr. Cas. 163=14 Cr. L.J. 654. (b) Persistence in riding on footboard after warning punishable under cl. 2, 5 N.L.R. 151; cheating, 25 P.R. 1908, Cr.; see 31 P.R. 1905, Cr.=2 Cr. L.J. 711.

119. If a male person, knowing a carriage, compartment, room or other place to be reserved by a railway administration for the exclusive use of females, enters the place without lawful excuse (a), or, having entered it, remains therein after having been desired by any railway servant to leave it, he shall be punished with fine which may extend to one hundred rupees, in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased, and may be removed from the railway by any railway servant.

Entering carriage or other place reserved for females.

120. If a person in any railway carriage (b) or upon any part of a railway—

(a) is in a state of intoxication (c), or

(b) commits any nuisance or act of indecency, or uses obscene or abusive language, or

(c) wilfully and without lawful excuse interferes with the comfort (d) of any passenger or extinguishes any lamp,

he shall be punished (e) with fine which may extend to fifty rupees, in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased, and may be removed from the railway by any railway servant.

Obstructing railway servant in his duty.

121. If a person wilfully obstructs or impedes any railway servant in the discharge of his duty (f), he shall be punished (g) with fine which may extend to one hundred rupees.

Trespass and refusal to desist from trespass.

122. (1) If a person unlawfully (h) enters upon a railway, he shall be punished with fine which may extend to twenty rupees.

(2) If a person so entering refuses to leave the railway on being requested to do so by any railway servant, or by any other person on behalf of the railway administration, he shall be punished with fine which may extend to fifty rupees, and may be removed from the railway by such servant or other person.

Case law.—(a) Entry to assist wife about to travel in compartment reserved for women is with lawful excuse, 76 P.L.R. 1903. (b) Except under circumstances stated in section, no provision for ejecting passengers, 44 C. 279=25 C.L.J. 610 (c) While on its journey is public place, 30 B. 348=8 Bom. L.R. 22; so also goods yard, 26 B. 609=6 Bom. L.R. 290; in railway is an offence under this section, 1 N.L.R. 139. (d) Objecting to more passengers entering and standing against door is offence under this section, 31 P.W.R. 1910, Cr.=7 Ind. Cas 355=11 Cr. L.J. 451=26 P.R. 1910, Cr.=200 P.L.R. 1910 (e) S. 120 leaves no option as to punishment, 1 N.L.R. 139; and S. 95, I.P.C., does not apply, *ibid.* (f) *I.e.*, duty as authorised by law, 1 C.W.N. 74; resistance to putting a fence under claim by right of way is no offence, Rat. Un. Cr. C. 675. (g) After summary trial, A.W.N. (1902) 24; 4 P.R. 1914, Cr. (h) Intention of section, (1914) M.W.N. 124=22 Ind. Cas. 177; section not applicable to passengers travelling in railway carriage, 44 C. 279=25 C.L.J. 610; *i.e.*, without permission of railway administration, 30 B. 348=8 Bom. L.R. 22=2 Cr. L.J. 216; unlawful entry basis of offence under both clauses, 22 C.W.N. 575; entry in exercise of right is not, 22 B. 595; (1914) M.W.N. 124; nor entry of platform without ticket, 1 S.L.R. 91; nor entry by dominant owner to effect necessary repairs, 22 B. 525; will be unlawful if not in exercise of right, 30 B. 348; crossing railway lines without permission unlawful, 4 P.R. 1914, Cr.=155 P.L.R. 1914=15 Cr. L.J. 468=24 Ind. Cas. 348.

Disobedience of omnibus drivers to directions of railway servants.

123. If a driver or conductor of a tramcar, omnibus, carriage or other vehicle while upon the premises of a railway disobeys the reasonable directions of any railway servant or police-officer, he shall be punished with fine which may extend to twenty rupees.

Opening or not properly shutting gates.

124. In either of the following cases, namely :—

- (a) if a person knowing or having reason to believe that an engine or train is approaching along a railway, opens any gate set up on either side of the railway across a road, or passes or attempts to pass, or drives or takes or attempts to drive or take, any animal, vehicle or other thing across the railway,
- (b) if, in the absence of a gate-keeper, a person omits to shut and fasten such a gate as aforesaid as soon as he and any animal, vehicle or other thing under his charge have passed through the gate,

the person shall be punished with fine which may extend to fifty rupees.

125. (1) The owner (a) or person in charge of any cattle straying on a railway provided with fences suitable for the exclusion of cattle shall be punished with fine which may extend to five rupees for each head of cattle, in addition to any amount which may have been recovered or may be recoverable under the Cattle-trespass Act, 1871.

I of 1871.

(2) If any cattle are wilfully driven, or knowingly permitted to be, on any railway otherwise than for the purpose of lawfully crossing the railway or for any other lawful purpose, the person in charge of the cattle or, at the option of the railway administration, the owner of the cattle shall be punished with fine which may extend to ten rupees for each head of cattle, in addition to any amount which may have been recovered or may be recoverable under the Cattle-trespass Act, 1871.

I of 1871.

(3) Any fine imposed under this section may, if the Court so directs, be recovered in manner provided by section 25 of the Cattle-trespass Act, 1871.

I of 1871.

(4) The expression "public road" in sections 11 and 26 of the Cattle-trespass Act, 1871, shall be deemed to include a railway, and any railway servant may exercise the powers conferred on officers of police by the former of those sections.

I of 1871.

(5) The word "cattle" has the same meaning in this section as in the Cattle-trespass Act, 1871.

I of 1871.

Case law :—(a) Punishable on ground of negligence, 18 M. 228-1 Weir 874 (8 A.L.J. 1249-12 Ind. Cas. 990-34 A. 91-12 Cr. L.J. 614, F.) ; to be proved to have been guilty in permitting cattle to stray, *ibid.*

Maliciously wreck-
ing or attempting to
wreck a train.

126. If a person unlawfully—

- (a) puts or throws upon or across any railway any wood, stone (a) or other matter or thing, or
- (b) takes up, removes (b), loosens or displaces any rail, sleeper or other matter or thing belonging to any railway, or
- (c) turns, moves, unlocks (c) or diverts any points or other machinery belonging to any railway, or
- (d) makes or shows, or hides or removes, any signal or light upon or near to any railway, or
- (e) does or causes to be done or attempts to do any other act or thing in relation to any railway,

with intent, or with knowledge that he is likely, to endanger the safety of any person travelling or being upon the railway, he shall be punished with transportation for life or with imprisonment for a term which may extend to ten years.

127. If a person unlawfully throws or causes to fall or strike at, against, into or upon any rolling-stock forming part of

Maliciously hurt-
ing or attempting to
hurt persons travel-
ling by railway. (d)

a train any wood, stone or other matter or thing with intent, or with knowledge that he is likely, to endanger the safety of any person being in or upon such rolling-stock or in or upon any other rolling-stock forming part of the same train, he shall be punished with transportation for life or with imprisonment for a term which may extend to ten years.

128. If a person, by any unlawful act or by any wilful omission or

Endangering safety
of persons travelling
by railway by wilful
act or omission. (e)

neglect, endangers or causes to be endangered the safety of any person travelling or being upon any railway, or obstructs or causes to be obstructed or attempts to obstruct any rolling-stock upon any railway, he shall be punished with imprisonment for a

term which may extend to two years.

129. If a person rashly or negligently does any act or omits to do

Endangering safe-
ty of persons tra-
velling by railway
by rash or negligent
act or omission.

what he is legally bound to do, and the act or omission is likely to endanger the safety (f) of any person travelling or being upon a railway, he shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

Case-law :—(a) Placing stones on rails even when no train was due then, Rat. Un. Cr. C. 829 (19 B. 716, F.); throwing stones at a railway train, U.B.R. (1892—1896), Vol. I, 303. (b) *E.g.*, rails, 1 Bom. L.R. 682. (c) *E.g.*, hour table at railway station, 1 Weir 875. (d) See 14 O.P.L.R. 176; but not with whipping, 14 C.P.L.R. 8, Cr. (e) See 29 C. 385—6 C.W.N. 468; by pulling up the iron post and placing it across, Rat. Un. Cr. C. 459. (f) To fail to remove a stone is not to endanger, Rat. Un. Cr. C. 394.

130. (1) If a minor ^(a) under the age of twelve years is with respect to any railway guilty of any of the acts or omissions mentioned or referred to in any of the four last foregoing sections, he shall be deemed, notwithstanding anything in section 82 or section 83 of the Indian Penal Code, to have committed an offence, and the Court convicting him may, if it thinks fit, direct that the minor, if a male, shall be punished with whipping ^(b) or may require the father or guardian of the minor to execute, within such time as the Court may fix, a bond binding himself, in such penalty as the Court directs, to prevent the minor from being again guilty of any of those acts or omissions.

Special provision with respect to the commission by children of acts endangering safety of persons travelling by railway.
XLV of 1860.

(2) The amount of the bond, if forfeited, shall be recoverable by the Court as if it were a fine imposed by itself.

(3) If a father or guardian fails to execute a bond under sub-section (1) within the time fixed by the Court, he shall be punished with fine which may extend to fifty rupees.

Railway servants to be public servant for the purposes of Chapter IX of the Indian Penal Code.
XLV of 1860.

137. (1) Every railway servant ^(c) shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code.

(2) In the definition of "legal remuneration" in section 161 of that Code, the word "Government" shall, for the purposes of sub-section (1), be deemed to include any employer of a railway servant as such.

(3) A railway servant shall not—

(a) purchase or bid for, either in person or by agent, in his own name or in that of another, or jointly or in shares with others, any property put up to auction under section 55 or section 56, or,

(b) in contravention of any direction of the railway administration in this behalf, engage in trade.

(4) Notwithstanding anything in section 21 of the Indian Penal Code, a railway servant shall not be deemed to be a public servant for any of the purposes of that Code except those mentioned in sub-section (1).
XLV of 1860.

Amendment of the Indian Penal Code.
XLV of 1860.

149. In sections 194 and 195 of the Indian Penal Code, for the words "by this Code or the law of England" the words "by the law of British India or England" shall be substituted.

Case-law :—(a) Section applies only to minors of 12, 11 C.P.L.R. 8, Cr. (b) Boys 13 or 14 years old cannot be whipped, 11 C.P.L.R. 8, Cr.; see U.B.R. (1892—1896), Vol. I, 302; 14 C.P.L.R. 176 (c) As long as he continues to be such, is public servant, 9 P.R. 1888, Cr.; 44 C. 279—25 C.L.J. 610; e.g., goods clerk, 9 P.R. 1898, Cr.

THE REFORMATORY SCHOOLS ACT, 1897.

(ACT VIII OF 1897.)

[Passed on the 11th March, 1897.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1876	V	Reformatory Schools ...	Rep., Act VIII of 1897.
1897	VIII	Reformatory Schools ...	Am., Act IV of 1914, ,, Act X of 1914.

An Act to amend the law relating to Reformatory Schools and to make further provision for dealing with youthful offenders. „

WHEREAS it is expedient to amend the law relating to Reformatory Schools and to make further provision for dealing with youthful offenders ; It is hereby enacted as follows :—

I.—Preliminary.

Title, commencement and extent. 1. (1) This Act may be called the Reformatory Schools Act, 1897 ; [1] *

(2) It shall come into force at once.

(3) This section and section 2 shall extend to the whole of British India. The other sections shall extend in the first instance to the whole of British India except the territories for the time being administered by the Lieutenant-Governor of the Punjab and the Chief Commissioner of Coorg, but either of the said Local Governments may at any time, by notification in the local official Gazette, extend these sections to their territories from such day as may be fixed in any such notification.

Repeal of Act V of 1876. 2. (1) The Reformatory Schools Act, 1876, is V of 1876. hereby repealed.

(2) But all proceedings taken, orders passed, officers appointed or authorised and rules made under the said Act shall, as far as may be, be deemed to have been respectively passed, appointed or authorised and made under this Act.

(3) Any enactment or document referring to the said Act shall, as far as may be (a), be construed to refer to this Act, or to the corresponding portions thereof.

Section 399 of Act X of 1882 repealed on date fixed by a notification under section 1, sub-section (3). 3. From the date fixed by any notification issued under section 1, sub-section (3), section 399 of the Code of Criminal Procedure, 1882, shall be X of 1882. repealed in the province to which the notification relates (b).

Leg. Changes :—[1] Omitted by Act X of 1914.

Case-law :—(a) As far as may be, interpretation of, 21 M. 430 ; rules framed under the old Act, if not inconsistent, in force, 21 M. 430. (b) Repeal of Act V of 1876 does not revive S. 399, Cr. P.C., 25 C. 333 = 2 C.W.N. 11 ; combined effect of Act V of 1876 and S. 399, Cr. P.C., 12 M. 14.

Reformatory ACT VIII OF 1897 (REFORMATORY SCHOOLS). §. 4

Definitions. 4. In this Act, unless there is anything repugnant in the subject or context,—

- (a) "youthful offender" means any boy who has been convicted of any offence punishable with transportation or imprisonment and who, at the time of such conviction, was under the age of fifteen years (a) :
- (b) "Inspector General" includes any officer appointed by the Local Government to perform all or any of the duties imposed by this Act on the Inspector General : and
- (c) "District Magistrate" shall include a Chief Presidency Magistrate.

II.—Reformatory Schools.

Power to establish and discontinue Reformatory Schools.

5.[1] * * * * The Local Government may—

- (a) establish and maintain Reformatory Schools at such places as it may think fit ;
- (b) use as Reformatory Schools schools kept by persons willing to act in conformity with such rules, consistent with this Act, as the Local Government may prescribe in this behalf ;
- (c) direct that any school so established or used shall cease to exist as a Reformatory School or to be used as such.

Requisites of schools. 6. Every school so established or used must provide—

- (a) sufficient means of separating the inmates at night ;
- (b) proper sanitary arrangements, water-supply, food, clothing and bedding for the youthful offenders detained therein ;
- (c) the means of giving such youthful offenders industrial training ;
- (d) an infirmary or proper place for the reception of such youthful offenders when sick.

7. (1) Every school intended to be established or used as a Reformatory School shall, before being used as such, be inspected by the Inspector General, and if he finds that the requirements of section 6 have been complied with, and that, in his opinion, such school is fitted for the reception of such youthful offenders as may be sent there under this Act, he shall certify to that effect, and such certificate shall be published in the local official Gazette, together with an order of the Local Government establishing the school as a Reformatory School or directing that it shall be used as such, and the school shall thereupon be deemed to be a Reformatory School.

(2) Every such school shall, from time to time, and at least once in every year, be visited by the said Inspector General, who shall send to the Local Government a report on the condition of the school in such form as the Local Government may prescribe.

Leg. Changes:—[1] The words "With the previous sanction of the Governor General in Council" were omitted by Act IV of 1914.

Case-law :—(a) Record must show that the boy is under 15. Rat. Un. Cr. C. 905 ; the Magistrate to be satisfied regarding age of the offender, 1 Weir 879 ; person over 15 years of age, 27 C. 138.

S. 9 ACT VIII OF 1897 (REFORMATORY SCHOOLS). **Reformatory**

8. (1) Whenever any youthful offender is sentenced to transportation or imprisonment ^(a), and is, in the judgment of the Court by which he is sentenced, a proper person to be an inmate of a Reformatory School ^(b), the Court may, subject to any rules made by the Local Government, direct that, instead of undergoing his sentence ^(c), he shall be sent to such a school, and be there detained for a period which shall be not less than three or more than seven years ^(d).

(2) The powers so conferred on the Court by this section shall be exercised only by (a) the High Court, (b) a Court of Session, (c) a District Magistrate, and (d) any Magistrate specially empowered by the Local Government in this behalf ^(e), and may be exercised by such Courts whether the case comes before them originally or on appeal ^(f).

(3) The Local Government may make rules ^(g) for—

(a) defining what youthful offenders should be sent to Reformatory Schools, having regard to the nature of their offences or other considerations, and

(b) regulating the periods for which youthful offenders may be sent to such schools according to their ages or other considerations.

9. (1) When any Magistrate not empowered to pass an order under the last foregoing section is of opinion that a youthful offender convicted by him is a proper person to be an inmate of a Reformatory School, he may, without passing sentence, record such opinion and submit his proceedings and forward the youthful offender to the District Magistrate ^(h) to whom he is subordinate.

Case-law :—(a) On conviction sentence must be passed, Rat. Un. Cr. C. 518; sentence ought to be self-contained, 24 M. 13; 15 A. 208; bound over to keep peace, in default, to be imprisoned, no sentence, 7 Bur. L.R. 80; see U.B.R. (1897—1901), Vol. I, 375; applicability of section to cases where fine alone is inflicted, 12 Cr. L.J. 244=10 Ind. Cas. 773. (b) Every juvenile offender should not be sent to Reformatory, Rat. Un. Cr. C. 726; 4 N.L.R. 180=9 Cr. L.J. 99; inmates of a school not to be associated with convicts of serious offences, Rat. Un. Cr. C. 726. (c) Direction for detention should be passed only after sentence, Rat. Un. Cr. C. 726, 528; 1 Bom. L.R. 162; 5 O.W.N. 210; course to be adopted, 1 Weir 879; in absence of sentence, mere order for detention, illegal, 1 Weir 879; Rat. Un. Cr. C. 726; 5 O.W.N. 210; difference in procedure under this section and section 562, Cr. P.C., 2 L.B.R. (1903—1904) 216; directing imprisonment in reformatory to terminate on payment of fine, illegal, L.B.R. (1898—1900) 491. (d) Time of detention, 24 M. 13; Magistrate should state the exact period of detention, 24 M. 13 [F. in 15 Bom. L.R. 306=2 Bom. Cr. Cas. 57=19 Ind. Cas. 512=14 Cr. L.J. 256]; minimum period of detention, Rat. Un. Cr. C. 947; 2 O.W.N. 11; order directing a boy of 11 years to be detained for 5 years legal, 1 Weir 884; but see 3 L.B.R. 46; period of detention when offender over 13 years, 3 L.B.R. 46; offender over 14, 15 A. 208; offender over 16, B.H.C. Cr. Rul. 38 of 1887; procedure when offender is between 15 and 16, L.B.R. (1893—1900) 648. (e) Order by a Magistrate not specially empowered illegal, Rat. Un. Cr. C. 936, 947. (f) Power of a Court of appeal to pass order for detention in lieu of imprisonment, 4 O.W.N. 225; Rat. Un. Cr. C. 586; nature of the proceeding under this section, 14 B. 381; Rat. Un. Cr. C. 494. (g) Regarding power to make rules, etc., 21 M. 430=1 Weir 880; 27 C. 133; 24 M. 13; 1 Weir 884 and 3 L.B.R. 46. (h) When Magistrate is not empowered under S. 8, *supra*, case to be submitted to District Magistrate and not to his immediate appellate Magistrate, 16 Cr. L.J. 32=26 Ind. Cas. 936.

(2) The Magistrate (a) to whom the proceedings are so submitted may make such further inquiry (if any) as he may think fit and pass such sentence and order for the detention (b) in a Reformatory School of the youthful offender, or otherwise, as he might have passed if such youthful offender had been originally tried by him.

10. (c) The officer in charge of a prison in which a youthful offender is confined, in execution of a sentence of imprisonment, may bring him, if he has not then attained the age of fifteen years (d), before the District Magistrate within whose jurisdiction such prison is situate; and such Magistrate may, if such youthful offender appears to be a proper person to be an inmate of a Reformatory School, direct that, instead of undergoing the residue of his sentence, he shall be sent to a Reformatory School, and there detained (e) for a period which shall be subject to the same limitations as are prescribed by or under section 8, with reference to the period of detention thereby authorised.

Power of Magistrates to direct boys under fifteen sentenced to imprisonment to be sent to Reformatory Schools.

11. (1) Before directing any youthful offender to be sent to a Reformatory School under section 8, section 9 or section 10, the Court or Magistrate shall inquire into the question of his age (f) and, after taking such evidence (if any) as may be deemed necessary (g), shall record a finding thereon (h), stating his age as nearly as may be (i).

(2) A similar inquiry shall be made and finding recorded by every Magistrate not empowered to pass an order under section 8 before submitting his proceedings and forwarding the youthful offender to the District Magistrate as required by section 9, sub-section (1).

12. Every youthful offender directed by a Court or Magistrate to be sent to a Reformatory School shall be sent to such Reformatory School as the Local Government may, by general or special order, appoint for the reception of youthful offenders so dealt with by such Court or Magistrate:

Government to determine Reformatory School to which such offenders shall be sent.

Provided that, if accommodation in a Reformatory School is not immediately available for such youthful offender, he may be detained in the juvenile ward or such other suitable part of a prison as the Local Government may direct—

- (a) until he can be sent to a Reformatory School, or
- (b) until the term of his original sentence expires,

Case-law :—(a) Magistrate cannot transfer a case submitted to him, 2 L.B.R. (1903—1904) 121. (b) Section allows only commutation of sentence, 5 C.W.N. 210; 1 Bom. L.R. 162. (c) Section inapplicable to an accused who is not a youthful offender within the definition, 15 C.P.L.R. 151. (d) Interference by High Court, when term of sentence expired, B.H.C. Cr. Rul. 45 of 1897; procedure when Magistrate desires to commute sentence of offender in jail into detention, B.H.C. Cr. Rul. 55 of 1899. (e) Order of detention whether sentence, 16 Cr. L.J. 134 = 27 Ind. Cas. 198. (f) Duty to decide exact age, 24 M. 13; 14 B. 381. (g) Some evidence as to age, if procurable, is necessary, 27 C. 133. (h) Definite finding as to age necessary, 3 C.W.N. 576; Rat. Un. Cr. C. 726; 1 Weir 879; 14 B. 381; 1 L.B.R. 126. (i) Age to be stated in the order of detention, 24 M. 13 = 1 Weir 882.

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whichever event may first happen. Should the term of his original sentence first expire, he shall thereupon be released, but, should he be sent to a Reformatory School, then the period of detention previously undergone shall be treated as detention in a Reformatory School.

13. (1) If at any time after a youthful offender has been sent to a Reformatory School it appears to the Committee of Visitors or Board of Management, as the case may be, that the age of such youthful offender has been understated in the order for detention, and that he will attain the age of eighteen years before the expiration of the period for which he has been ordered to be detained, they shall report the case for the orders of the Local Government.

(2) No person shall be detained in a Reformatory School after he has been found by the Local Government to have attained the age of eighteen years.

Discharge or removal by order of Government.

14. The Local Government may at any time order any youthful offender—

- (a) to be discharged from a Reformatory School;
- (b) to be removed from one Reformatory School to another such school situate within the territories subject to such Government: Provided that the whole period of his detention in a Reformatory School shall not be increased by such removal.

Power to Governor General in Council to direct use of Reformatories in one province for reception of youthful offenders from another. (a)

15. (1) The Governor General in Council may by general or special order direct that any Reformatory School situated in one province shall be available for the reception of youthful offenders directed to be sent to any Reformatory School by any Court or Magistrate in any other province.

(2) Any such order may also provide for the removal of the youthful offender, and the cost of his maintenance, and may give any such further directions as may be necessary.

16. Nothing contained in the Code of Criminal Procedure, 1882, X of 1882, shall be construed to authorise any Court or Magistrate to alter or reverse in appeal or revision any order passed with respect to the age of a youthful offender (b) or the substitution of an order for detention in a Reformatory School for transportation or imprisonment(c).

Certain orders not subject to appeal or revision.

Case-law :—(a) Extension, 3 C.W.N. xvi ; scope of the section, 21 A. 391 ; 6 Bom. L.R. 550 ; 27 O. 133 ; 18 P.R. 1907=43 P.W.R. 1907=55 P.L.R. 1908 ; 5 C.W.N. 210 ; 34 P.R. 1910, Cr. ; 1 L.B.R. 68 ; 25 O. 333 ; 25 O. 852 ; 5 M.L.T. 296. (b) Magistrate's finding as to age—how far final, 24 M. 13=1 Weir 882 ; 7 Bur. L.R. 80 ; 1 Sind. 93 ; 6 Bom. L.R. 550 ; interference by Government when Magistrate makes mistake by understating age, 24 M. 13 ; High Court interference when no finding as to age, 21 A. 391. (c) Substitution of an order of detention for a sentence of imprisonment, 3 C.W.N. 576 ; construction of words, "The substitution of an order for detention in a Reformatory School for transportation or imprisonment," 21 A. 391 ; 5 S.L.R. 173=13 Ind. Cas. 284=13 Cr. L.J. 44 ; extent of protection given by the section, 21 A. 391 ; 5 C.W.N. 210 ; 5 O.W.N. 211=28 O. 423 ; order subject to appeal or revision, 27 O. 133 ; 21 A. 391 ; 21 A. 160 ; 5 C.W.N. 210 ; 1 S.L.R. 72 ; 7 Bur. L.R. 60 ; Rat. Un. Cr. C. 905, 936, 947 ; 12 M. 94 ; 6 P.R. 1882, Cr. ; L.B.R. (1893—1900), 493, following L.B.R. (1893—1900), 441 ; 1 L.B.R. 68, 68.

III.—Management of Reformatory Schools.

Appointment of Superintendent and Committee of Visitors or Board of Management.

17. (1) For the control and management of every Reformatory School, the Local Government shall appoint either (a) a Superintendent and a Committee of Visitors, or (b) a Board of Management.

(2) Every Committee and every Board so appointed must consist of not less than five persons, of whom two at least shall be Natives of India.

(3) The Local Government may suspend or remove any Superintendent or any Member of a Committee or Board so appointed.

18. (1) Every Superintendent so appointed may, with the sanction of the Committee, by license under his hand, permit any youthful offender sent to a Reformatory School, who has attained the age of fourteen years, to live under the charge of any trustworthy and respectable person named in the license, or any officer of Government or of a Municipality, being an employer of labour and willing to receive and take charge of him, on the condition that the employer shall keep such youthful offender employed at some trade, occupation or calling.

(2) The license shall be in force for three months and no longer, but may, at any time and from time to time until the expiration of the period for which the youthful offender has been directed to be detained, be renewed for three months at a time.

Cancellation of license.

19. The license shall be cancelled at the desire of the employer named in the license.

20. If during the term of the license the employer named therein dies, or ceases from business or to employ labour, or the period for which the youthful offender has been directed to be detained in the Reformatory School expires, the license shall thereupon cease and determine.

Cancellation of license in case of ill-treatment.

21. If it appears to the Superintendent that the employer has ill-treated the youthful offender, or has not adequately provided for his lodging and maintenance, the Superintendent may cancel the license.

Superintendent to be deemed guardian of youthful offenders.

22. (1) The Superintendent of a Reformatory School shall be deemed to be the guardian of every youthful offender detained in such school, within the meaning of Act No. XIX of 1850 (*concerning the binding of apprentices*).

(2) If it appears to the Superintendent that any youthful offender licensed under section 18 has behaved well during one or more periods of his license, the Superintendent may, with the sanction of the Committee, apprentice him under the provisions of the said Act, and on such apprenticeship the right to detain such youthful offender in a Reformatory School shall cease and the unexpired term (if any) of his sentence shall be cancelled.

Power to apprentice youthful offender.

Duties of Committee of Visitors. 23. (1) Every Committee of Visitors appointed under section 17 for a Reformatory School shall, at least once in every month,—

- (a) visit the school, to hear complaints and see that the requirements of section 6 have been complied with, and that the management of the school is proper in all respects ;
- (b) examine the punishment-book ;
- (c) bring any special cases to the notice of the Inspector General ; and
- (d) see that no person is illegally detained in the school.

(2) If any member of a Committee of Visitors so appointed fails or neglects, during a period of six consecutive months, to visit the school and assist in the discharge of the duties aforesaid, he shall cease to be a member of such Committee.

Powers of Board of Management. 24. If, in exercise of the power conferred by section 17, the Local Government appoints a Board of Management for any Reformatory School, such Board shall have the powers and perform the functions of the Superintendent under sections 18 to 22, both inclusive ; and the license mentioned in section 18 may be under the hand of their chairman ; and they shall be deemed to be the guardians of the youthful offenders detained in such school.

Power to appoint Trustees or other Managers of a school to be a Board of Management. 25. The Local Government may declare any body of Trustees or Managers of a school, who are willing to act in conformity with the rules referred to in section 5, clause (b), to be a Board of Management under this Act, and thereupon such body or Managers shall have all the powers and perform all the functions of such Board of Management.

Power of Board to make rules. 26. (1) With the previous sanction of the Local Government, every Board of Management of a Reformatory School may from time to time make rules consistent with this Act—

- (i) to prescribe the articles which are to be deemed to be " prohibited articles " ; and
- (ii) to regulate—
 - (a) the conduct of business of the Board ;
 - (b) the management of the school ;
 - (c) the education and industrial training of youthful offenders ;
 - (d) visits to, and communication with, youthful offenders ;
 - (e) the terms and conditions under which any articles declared by the Board to be " prohibited articles " may be introduced into or removed out of the school ;
 - (f) the manner in which such articles are to be removed when introduced without due authority ;
 - (g) the conditions and limitations under which such articles may be supplied outside the school to any youthful offender under order of detention therein ;

- (h) the conditions on which the possession by any such youthful offender of such articles may be sanctioned ;
- (i) the penalties to be imposed for the supply or possession of such articles when supplied or possessed without due authority ;
- (j) the punishment of offences committed by youthful offenders ; and
- (k) the granting of licenses for the employment of youthful offenders.

(2) In the absence of a Board of Management, the Local Government may make rules consistent with this Act to regulate for any Reformatory School the matters mentioned in any clause of sub-section (1), other than clause (ii) (a), and also the mode in which the Committee of Visitors shall conduct their business.

IV.—Offences in relation to Reformatory Schools.

Penalty for introduction or removal or supply of prohibited articles and communication with youthful offenders.	27. Whoever, contrary to any rule made under section 26, introduces or removes or attempts by any means whatever to introduce or remove into or from any Reformatory School, or supplies or attempts to supply outside the limits of any Reformatory School to any youthful offender under order of detention therein, any prohibited article,
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and every officer or person in charge of a Reformatory School who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any Reformatory School, to be possessed by any youthful offender detained therein, or to be supplied to any such youthful offender outside its limits,

and whoever, contrary to any such rule, communicates or attempts to communicate with any such youthful offender,

and whoever abets any offence made punishable under this section,

shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

28. Whoever abets an escape, or an attempt to escape, on the part of a youthful offender from a Reformatory School, or from the employer of such youthful offender, shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding two hundred rupees, or with both.	Penalty for abetting escape of youthful offender.
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29. A Police-officer may, without orders from a Magistrate and without a warrant, arrest any youthful offender sent to a Reformatory School under this Act, who has escaped from such school or from his employer, and take him back to such school or to his employer.	Arrest of escaped youthful offender.
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V.—Miscellaneous.

Application of Act XV of 1869 to youthful offenders detained in Reformatory Schools.

30. The provisions of the Prisoners' Testimony Act, 1869, shall be applied, so far as they can be made applicable, to youthful offenders detained in Reformatory Schools as if they were persons confined in jail within the meaning of that Act.

31. (a) (1) Notwithstanding anything contained in this Act or in any other enactment for the time being in force, any Court may, if it shall think fit, instead of sentencing any youthful offender to transportation or imprisonment or directing him to be detained in a Reformatory School, order him to be—

Power to deal in other ways with youthful offenders, including girls.

(a) discharged after due admonition, or

(b) delivered to his parent or to his guardian or nearest adult relative, on such parent, guardian or relative executing a bond (b), with or without sureties, as the Court may require, to be responsible for the good behaviour of the youthful offender for any period not exceeding twelve months.

(2) For the purposes of this section the term "youthful offender" shall include a girl.

(3) The powers conferred on the Court by this section shall be exercised only by Courts empowered by or under section 8.

(4) When any youthful offender is convicted by a Court not empowered to act under this section and the Court is of opinion that the powers conferred by this section should be exercised in respect of such youthful offender, it may record such opinion and submit the proceedings and forward the youthful offender to the District Magistrate to whom such Court is subordinate.

(5) The District Magistrate to whom the proceedings are so submitted may thereupon make such order or pass such sentence as he might have made or passed if the case had originally been tried by him.

32. When a youthful offender during his period of detention in a Reformatory School is again convicted by a Criminal Court, the sentence of such Court shall commence at once, notwithstanding anything to the contrary in section 397 of the Code of Criminal Procedure, 1882, X of 1882, but the Court shall forthwith report the matter to the Local Government, which shall have power to deal with the matter in any way in which it thinks fit.

Procedure when youthful offender under detention in a Reformatory School is again convicted and sentenced.

Case-law :—(a) See 1 L.B.R. 279; 27 O. 183. (b) After inflicting whipping, no bond should be taken, 3 L.B.R. 30; section enables practically any Court in case of offender under S. 16, *supra*, to deliver him to his parents with or without sureties for his future good behaviour, 14 A.L.J. 1158—17 Or. L.J. 524—36 Ind. Cas. 492.

THE INDIAN REGISTRATION ACT, 1908.

(ACT XVI OF 1908.)

[Passed on the 18th December, 1908.]

An Act to consolidate the enactments relating to the Registration of Documents.

WHEREAS it is expedient to consolidate the enactments relating to the registration of documents ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called the Indian Registration Act, 1908.

(2) It extends to the whole of British India, except such districts or tracts of country as the Local Government may, with the previous sanction of the Governor General in Council, exclude from its operation.

(3) It shall come into force on the first day of January 1909.

* * * *

PART III.

OF REGISTRABLE DOCUMENTS.

* * * *

19. If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy.

Documents in language not understood by registering officer.

* * * *

21. (1) No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

Description of property and maps or plans.

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

(3) Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

* * * *

PART XIV.**OF PENALTIES.**

81. Every registering officer appointed under this Act and every

Penalty for incor-
rectly endorsing,
copying, translating
or registering docu-
ments with intent
to injure(a).

person employed in his office for the purposes of this Act, who being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby

to cause or knowing it to be likely that he may thereby cause injury as defined in the Indian Penal Code, to any person, shall be XLV of 1860. punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

Penalty for
making false state-
ments, delivering
false copies or trans-
actions, false per-
sonation, and abet-
ment.

82. Whoever—

- (a) intentionally makes any false statement, whether on oath or not and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or enquiry under this Act (b) ; or
- (b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan (c) ; or
- (c) falsely personates another (d) and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act ; or
- (d) abets (e) anything made punishable by this Act ;

Case-law :—(a) False certificate by a Registrar, see 6 O. C. 153; conditions for a conviction, 20 W.R. Cr. 49; Sub-Registrar, jurisdiction of, 6 W.R. Cr. 81. (b) Giving false evidence before Sub Registrar exercising delegated powers, 24 C. 755, cf. 20 C. 719; Registrar questioning parties if acts in execution of this Act, 1 Bom. L.R. 686; (14 Cr. L.J. 102=18 Ind. Cas. 662=12 M.L.J. 376=(1912) M.W.N. 1107, D.); false statements in irregular proceedings, 10 C. 604; stay of criminal proceedings pending civil suit, 5 C.L.J. 233=5 Cr. L.J. 199; contradictory statements before Sub-Registrar, 23 P.R. 1869, Or.; prosecution for denial of execution, 12 C.W.N. 47; statement and conduct held not to be false, 17 P.R. 1871, Or.; procedure when false statements are made before a Registrar, 11 C.L.J. 111; making false statements before a Sub-Registrar, 6 W.R. Cr. 81; 10 C. 1047. (c) Stay of proceedings pending civil suit to declare deed a forgery, 5 C.W.N. 44 (31 C. 858; 13 Cr. L.J. 175; 21 P.W.R. 1912, Cr. R.). (d) Fraudulent intent unnecessary to complete offence of false personation, 5 Bom. L.R. 138; 3 L.B.R. 222=4 Cr. L.J. 433; case not falling under false personation, 11 W.R. 24=2 B.L.R.O. Cr. 25; enquiry, scope of, 23 W.R. Cr. 55; expert evidence as to identity of thumb impressions, 32 C. 759=2 Cr. L.J. 259=9 C.W.N. 520; Sub-Registrar trying case against his clerk in capacity of Magistrate, 14 W.R. Cr. 74=8 B.L.R. 423-N; trial by Sub-Registrar instituting prosecution under section, 8 B.L.R. 423=17 W.R. Cr. 39; 5 B.L.R. App. 89=18 W.R. Cr. 15 (doubled 12 B.L.R.O. Cr. 35). (e) Abetment of false personages, 7 W.R. Cr. 92; abettor punishable more severely than principal, 8 W.R. Cr. 16; abetment of forgery, 25 C. 207=1 C.W.N. 681.

shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both (a).

83. (1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector General, the Branch Inspector General of Sindh, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class.

84. (1) Every registering officer appointed under this Act shall be deemed to be a public servant within the meaning of the Indian Penal Code.

(2) Every person shall be legally bound to furnish information to such registering officer when required by him to do so.

(3) In section 228 of the Indian Penal Code, the words "judicial proceeding" shall be deemed to include any proceeding under this Act.

* * * *

Case-law :—(a) Nature of punishment to be specified, 18 W.R. Cr. 13; commitment to Sessions Court, 5 B.H.C. Cr. 7; trial by jury of offences under section, 14 W.R. Cr. 32; misjoinder of charges, 30 C. 822=7 O.W.N. 639; sanction for prosecution, see 11 C. 566 in 11 M. 500; 21 M.L.T. 118=5 L.W. 414=40 M. 880; 12 M. 201 (explaining 10 M. 154 and 11 M. 3; 4 M.L.J. 189; 16 Cr. L.J. 617=80 Ind. Cas. 441; sanction, competency of Court to grant, A.W.N. (1882) 20; Registrar not a Court, 11 O.C. 358=9 Cr. L.J. 54; 15 A. 141 (dissenting from 15 M. 138); 2 M.L.J. 286; complaint without sanction to be rejected, 12 O.W.N. 822=8 C.L.J. 73=8 Cr. L.J. 51; 14 A.L.J. 412=38 A. 354=17 Cr. L.J. 465; prosecution for antecedent forgery and use before Registrar, sanction of Magistrate necessary, 25 C.L.J. 255=21 O.W.N. 640=44 O. 1002; similarity of thumb impressions how far sufficient for conviction, 16 Cr. L.J. 228=27 Ind. Cas. 900. (b) Prosecution when commences, 10 C. 1047; jurisdiction whether affected by S. 29, Cr. P.C., 7 M. 347=2 Weir 24=1 Weir 886 (F., 2 Weir 25); what is not institution of criminal charge, 10 W.R. Cr. 21=6 B.L.R. App. 13-N; Registrar's power to institute prosecution, 10 W.R. Cr. 5; trial by registering officer instituting prosecution, 8 B.L.R. 422=17 W.R. Cr. 39 and 5 B.L.R. App. 89, contra 14 W.R. Cr. 74=8 B.L.R. 423-N and 24 W.R. Cr. 1; Sub-Registrar's power to investigate into offences committed before him, 13 W.R. Cr. 21=4 B.L.R. App. 69; sanction of registering officer, see *supra*; see, also, 14 A.L.J. 412=38 A. 354=17 Cr. L.J. 465=36 Ind. Cas. 145; (27 Ind. Cas. 208, F.); jurisdiction of Sessions Judge to try offences under Act, 5 B.H.C. Cr. 7; 15 W.R. Cr. 58=6 B.L.R. 693; Registering officer whether a Court, 22 W.R. Cr. 10=13 B.L.R. App. 40; see, also, *supra*. (c) Clerk appointed by Sub-Registrar a public servant, 32 C. 664=2 Cr. L.J. 512; see, also, 22 W.R. Cr. 10; proceedings before Sub-Registrar judicial proceedings, 13 B.L.R. App. 40=22 W.R. Cr. 10; sanction for prosecution, see *supra*.

THE REGISTRATION OF SHIPS ACT, 1841.

(ACT X OF 1841.)

[Passed on the 5th July, 1841.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1841	X	Indian Registration of Ships.	Rep. in pt., Act XVI of 1874. " " and Am., Act XI of 1880. " Act VII of 1891. Am., Act V of 1883. " Act X of 1914.

An Act for prescribing the Rules to be observed in order that ships or vessels belonging to ports within the territories under the Government of the East India Company, or belonging to Native Princes or States or their subjects, may become entitled to the privileges of British ships under a proclamation of the Governor General of India in Council made in pursuance of the Statute 3rd and 4th Victoria, Ch. 56.

1. WHEREAS by a Statute passed in the third and fourth years of 3 & 4 Vict.,

Preamble. Her Majesty Queen Victoria entitled "An Act to c. 56.

regulate the trade of ships^(a) built and trading within the limits of the East India Company's Charter," it is enacted "that it shall be lawful for the Governor General of India in Council, by proclamation, to declare that all ships or vessels built or to be built within the limits of the Charter of the East India Company, being owned by Her Majesty's subjects for whom the said Governor General in Council has power to legislate, and belonging, under the Regulations hereinafter provided for, to any ports in the territories under the government of the said Company, shall be deemed to be British ships for all the purposes of trade within the said limits, including the Cape of Good Hope, and the territories and dependencies thereof: Provided that upon such declaration being made the said Governor General in Council shall, and the said Governor General in Council is hereby accordingly empowered to, make Regulations^(b), to be enforced by suitable penalties, concerning the registering, licensing and ascertaining the admeasurement of the tonnage and burden, and generally for the trading within the limits aforesaid of such ships or vessels;

And whereas it is further enacted in the same Statute as follows, that is to say: "And whereas it may be expedient to admit to similar privileges and advantages any ships or vessels belonging to Native Princes or States in subordinate alliance with, or having subsidiary

Case law :—(a) 4 M.I.A. 179. (b) Rule of measurement made by Marine Department, 14 B. 170.

Regn. of Ships ACT X OF 1841 (REGISTRATION OF SHIPS). S. 1.

treaties with, the East India Company, or owned by subjects of any such Princes or States, be it therefore enacted that the Governor General of India in Council may by such Regulations as aforesaid, such Regulations being subject as aforesaid, admit to the privileges and advantages of British ships for the purposes of trade within the limits of the Charter of the said Company, including the Cape of Good Hope, and the territories and dependencies thereof, or to any of such privileges and advantages, any ships or vessels belonging to such Princes or States, or any of them, or owned by subjects of any such Princes or States; but any such Regulations shall provide for the granting to such ships or vessels fit and convenient licenses or passes, and generally for the trading within the limits aforesaid of such ships or vessels";

And whereas in pursuance of such enactments it is expedient to frame such Regulations as are mentioned therein, the compliance with which shall be required in order that ships or vessels may be deemed British ships, or be admitted to the privileges and advantages of British ships under such proclamation as aforesaid;

It is hereby enacted that no ship or vessel shall be deemed a British ship under such Proclamation as aforesaid (except as regards ships or vessels registered before the passing of this Act, or having a pass at the time of passing thereof) unless the person or persons claiming property therein shall have caused the same to have been registered at some one of the ports hereinafter mentioned within the territories of the East India Company, and shall have obtained a certificate of such registry from the person or persons authorized to make such registry and grant such certificate as hereinafter directed, the form of which certificate shall be as follows:—

"This is to certify that in pursuance of the Act No. X of 1841 of the Governor General of India in Council (here insert the names and occupation and residence of subscribing owners) having made and subscribed the declaration required by the said Act and having declared that (he or they) together with (names, occupations and residence of non-subscribing owners) (is or are) sole owner or owners, in the proportions specified on the back hereof, of the ship or vessel called the (ship's name) of (place at which the vessel shall be registered) which is of the burthen of (number of tons), and whereof (master's name) is master, and that the said ship or vessel was (when and where built) and (name and employment of Surveying-officer), having certified to us, that the said ship or vessel has (number) decks and (number) masts, that her (here insert the measurement as ascertained by the rules hereinafter mentioned), that she is (how rigged) rigged with a (standing or running) bowsprit, is (description of stern) sterned, (carvel or clincher) built, has (whether any or no) gallery, and (kind of head, if any) head: and the said subscribing owners having consented and agreed to the above description, the said ship or vessel called the (name) has been duly registered at the port of (name of port). Certified under our hands at the custom-house, in the said port of (name of port), this (date) day of (name of month) in the year (words at length).

(Signed)———, *Collector or Registrar of Shipping.*"

S. 4 ACT X OF 1841 (REGISTRATION OF SHIPS). *Regn. of Ships*

And on the back of such certificate of registry there shall be an account of the parts or shares held by each of the owners mentioned and described in such certificate, in the form and manner following :—

Names of several owners within mentioned.				Number of shares held by each owner.
Name	...	...	...	Thirty-two.
Name	...	...	...	Sixteen.
Name	...	...	...	Eight.
				etc., etc.

(Signed) ———, *Collector.*

2. * * * The ports at which registration shall be made shall be the ports of Calcutta, Madras, Bombay,* and such other places subordinate to the Local Governments of India as such Governments respectively may, from time to time, declare to be registering ports under this Act :

Provided that ships or vessels built at any place other than any of such ports shall be allowed to make their first voyage to any of such ports, being the ports at which it is intended they shall be registered under a certificate to be granted by the principal British officer at the place where the ship is built, or if there be no British officer in authority there, then by three merchants of such place, which certificate shall contain all the particulars with regard to the ownership and description of the ships or vessels contained in a certificate of registry, and shall specify the ports at which it is intended that they shall respectively be registered, and which certificate shall have all the effect of a certificate of registry under this Act, during the first voyage from the place of building to the ports at which the ships or vessels respectively shall be afterwards registered :

Provided that such ships or vessels so proceeding on their first voyage as aforesaid shall be deemed British ships only whilst duly prosecuting such first voyage for the purpose of registry, and, if they be not registered within a reasonable time after their arrival at the port of registry, the owner or owners, or master or other person having or taking the command or charge of such ship or vessel, shall be liable, on conviction before a Presidency Magistrate or a Magistrate of the first class, to a penalty not exceeding five thousand rupees.

3. * * * The persons authorized to make such registry, and to grant such certificates as aforesaid, shall be such persons as the Local Governments may, from time to time, appoint for the ports under their respective Presidencies.

4. * * * At every port where registry shall be made in pursuance of this Act a book shall be kept by the registering-officer, in which all the particulars contained in the form of the certificate of the registry hereinbefore directed to be used shall be duly entered ; and every registry shall be numbered in progression, beginning such progressive numeration at the commencement of each and every year. And such registering-officer shall forthwith, or within one month at the furthest, send to the Government of

the Presidency to which he is subordinate a true and exact copy, together with the number of every certificate which shall be by him so granted.

5. * * * No registry shall henceforth be made or certificate be granted, until the following declaration be made or subscribed before the registering-officer by the owner or major part of the owners of the ship or vessel required to be registered :—

"I, A. B., of (place of residence and occupation) do truly declare that the ship or vessel (name) of (port or place) whereof (master's name) is at present master, being (kind of build, burthen, et cetera, as described in the certificate of the surveying-officer) was (when and where) built, and that I, the said (A. B.), and the other owners (names and occupations, if any, and where they respectively reside), am (or are) sole owner (or owners) of the said vessel, and that no other person or persons whatever hath or have any right, title, interest, share or property therein or thereto; and that I, the said (A. B.), and the said other owners (if any), am (or are) truly and *bona fide* a subject (or subjects) of Her Majesty for whom the Governor General of India in Council has power to legislate, and that no person not being subject as aforesaid, directly or indirectly, hath any share or part interest in the said ship or vessel."

Provided that, if the registering-officer shall see occasion to doubt the truth of any of the facts contained in the above declaration, he shall not deem such declaration to be conclusive, but may refuse the registry or certificate, and his discretion exercised in this behalf shall be subject only to an appeal to the Local Government to which he is subordinate.

6. * * * In case the required number of joint owners of any ship or vessel shall not personally attend to make and subscribe the declaration hereinbefore directed to be made and subscribed, then and in such case such owner or owners as shall personally attend and make and subscribe the declarations aforesaid shall further declare that the part owner or part owners of such ship or vessel then absent is or are not resident within twenty miles of such port or place, and hath or have not to the best of his or their knowledge or belief wilfully absented himself or themselves in order to avoid the making the declaration hereinbefore directed to be made and subscribed, or is or are prevented by illness from attending to make and subscribe the said declaration.

7. And in order to enable the registering-officer to grant a certificate truly and accurately describing every ship or vessel to be registered in pursuance of this Act, and also to enable all other officers of Customs, on due examination, to discover whether any such ship or vessel is the same with that for which a certificate is alleged to have been granted, it is hereby enacted that—

previous to the registering or granting of any certificate of registry as aforesaid some one or more person or persons appointed by the Local Governments respectively, taking to his or their assistance, if he or they shall judge it necessary, one or more person or persons, skilled in the building and admeasurement of ships, shall go on board of every such ship or vessel that is to be registered, and shall strictly and accurately examine

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and admeasure every such ship or vessel as to all and every particular contained in the form of the certificate hereinbefore directed in the presence of the master, or of any other person who shall be appointed for that purpose on the part of the owner or owners, or in his or their absence by the said master, and shall deliver a true and just account in writing of all such particulars of the build, description and admeasurement of every such ship or vessel as are specified in the form of the certificate above recited to the officer authorized to make such registry and grant such certificate of registry as aforesaid; and the said master or other person attending on the part of the owner or owners is hereby required to sign his name also to the certificate of such surveying or examining officer, in testimony of the truth thereof, provided such master or other person shall consent and agree to the several particulars set forth and described therein.

8. The certificate of the surveying-officer shall be in the form in the schedule to this Act or in such other form as the Governor General in Council may from time to time prescribe; and such certificate shall be delivered to the registering-officer before registry.

Certificate of surveying-officer.

9. Subject to the provisions of section 70 of Act I of 1859 (*An Act for the amendment of the law relating to Merchant Seamen*) as amended by section 9 of the Indian Merchant Seamen's Act, 1876, the tonnage of a ship XIII of 1876, or vessel required by law to be registered shall, previous to her being registered, be measured and ascertained according to such of the rules and orders for the time being in force in and under the Merchant Shipping Act, 1854, as amended by subsequent Acts including the Merchant Shipping (Tonnage) Act, 1889, as apply to measurement of tonnage for the purpose of registry.

Measurement of tonnage for purpose of registry.

17 & 18 Vict., c. 104.
52 & 53 Vict., c. 43.

10. Subject to the provisions referred to in the last foregoing section, the tonnage of a ship or vessel requiring to be measured for any purpose other than registry shall be measured and ascertained according to such of the rules and orders for the time being in force in and under the Merchant Shipping Act, 1854, amended as aforesaid, as apply to measurement of tonnage for a purpose other than registry.

Measurement of tonnage for purpose other than registry.

17 & 18 Vict., c. 104.

11. The rules and orders referred to in section 9 and section 10 of this Act shall, in their application to measurement of tonnage for the purposes of this Act, or of any enactment, rule or order referring to this Act, be read and construed as if the Governor General in Council were therein named instead of the Board of Trade or the authority for which the Board of Trade has been substituted by section 3 of the Merchant Shipping Act, 1872.

Substitution of Governor General in Council for Board of Trade.

35 & 36 Vict., c. 73.

12. The true amount of the register tonnage of every ship or vessel to be measured and ascertained according to the rules and orders referred to in section 9 of this Act shall be deeply carved or cut in figures of at least three inches in length on the main beam of every such ship or vessel prior to her being registered.

Marking of register tonnage on ship or vessel.

16. [*Registration of country craft not exceeding two hundred tons.*]
Repealed by Act XI of 1850.

14. * * * Whenever the register tonnage of any ship or vessel shall have been ascertained according to the said rules and orders, such account of register tonnage shall ever after be deemed the register tonnage of such ship or vessel, and shall be repeated in every subsequent registry of such ship or vessel, unless it shall happen that any alteration has been made in the form of burthen of such ship or vessel, or it shall be discovered that the register tonnage of such ship or vessel had been erroneously taken and computed.

15. * * * If such certificate as aforesaid shall be sold, lent or otherwise disposed of to any person or persons what-ever than those for whose use it is granted, or shall be made use of for the service of any other ship or vessel than the ship or vessel for which it is granted, such certificate shall thenceforth be utterly void, and the master or any owner of the ship or vessel who shall be proved to have sold, lent or disposed of such certificate, or made use of the same as aforesaid, or shall have concurred in or been privy to the committing of any such offence, shall be liable, * * * on conviction before a Presidency Magistrate or a Magistrate of the first class, to a penalty not exceeding ten thousand rupees.

And in case such ship or vessel shall be lost or taken by the enemy, burnt or broken up, or otherwise prevented from returning to the port at which she is registered, or shall on any account have lost and forfeited the privileges of a British ship, or shall have been seized and legally condemned for illicit trading, or shall have been taken in execution for debt and sold by due process of law, or shall have been sold to the Crown, * * * or shall under any circumstances have been registered *de novo*, the certificate, if preserved, shall be delivered up, within one month after the arrival of the master in any port or place in the territories of the East India Company, to the registering-officer at such port, in default whereof the master or any of the owners shall be liable, on conviction before a Presidency Magistrate or a Magistrate of the first class, to a penalty not exceeding five thousand rupees.

And if any person not being such subject as aforesaid shall purchase or otherwise become entitled to the whole or to any part or share of or any interest in such ship or vessel, and the same shall be within the limits of any port of the territories of the East India Company, then and in such case the certificate of registry shall, within seven days after such purchase or transfer of property in such ship or vessel, be delivered up to the registering-officer at such port, and if such ship or vessel shall be in any place not within the territories of the East India Company when such purchase or transfer of property shall take place, then the certificate shall be delivered up within fourteen days after the arrival of such ship or vessel or of the master thereof in any port of the territories of the East India Company to the registering-officer at such port, in default whereof the master or any of the owners shall be liable on conviction before any Justice of the Peace in a penalty not exceeding five thousand rupees

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recoverable in manner provided by the law for the time being in force for the recovery of fines imposed by Criminal Courts.

16. * * * When and so often as the master of any ship or vessel registered in manner hereinbefore directed shall be changed, the master or owner of such ship or vessel shall deliver to the person or persons hereinbefore authorized to make such registry and grant such certificates of registry at the port where such change shall take place, if it be a port within the territories of the East India Company, the certificate of registry belonging to such ship or vessel, who shall thereupon endorse and subscribe a memorandum of such change, and shall forthwith give notice of the same to the proper officer of the port or place where such ship or vessel was last registered pursuant to this Act, who shall likewise make a memorandum of the same in the book of registers which is hereby directed and required to be kept, and shall forthwith give notice thereof in like manner as of the original entry. But if the change do not take place in any port within the territories of the East India Company, then such delivery, memorandum and endorsement shall be made and notice given at the first port within the territories of the East India Company at which the new master shall arrive after such change. In default of which delivery of the certificate such new master or any of the owners shall be liable, on conviction before a Justice of the Peace, to a penalty not exceeding five thousand rupees recoverable as aforesaid.

17. * * * It shall not be lawful for any owner or owners of any ship or vessel to give any name to such ship or vessel other than that by which she was first registered in pursuance of this Act, and * the owner or owners of all and every ship or vessel which shall be so registered shall, before such ship or vessel, after such registry, shall begin to take in any cargo, paint or cause to be painted, in white or yellow letters of a length of not less than four inches upon a black ground on some conspicuous part of the stern, the name by which such ship or vessel shall have been registered pursuant to this Act, and the port to which she belongs, in a distinct and legible manner, and shall so keep and preserve the same.

And * if such owner or owners, or master or other person, having or taking the charge or command of such ship or vessel, shall permit such ship or vessel to begin to take in cargo before the name of such ship or vessel has been so painted as aforesaid, or shall wilfully alter, erase, obliterate or in anywise hide or conceal, or cause or procure or permit the same to be done, or shall in any written or printed paper or other document describe such ship or vessel by any name other than that by which she was first registered pursuant to this Act, or shall verbally describe or cause or procure or permit such ship or vessel to be described by any other name to any officer or officers of Revenue in the due execution of his or their duty, then and in every such case the certificate of registry shall thenceforth become utterly void, and such owner or owners, or master or other person having or taking the charge or command of such ship or vessel, shall be liable, on conviction before a Presidency Magistrate or a Magistrate of the first class, to a penalty not exceeding ten thousand rupees recoverable as aforesaid.

18. * * * All and every person and persons who shall apply for a certificate of the registry of any ship or vessel shall, and they are hereby required to, produce to the person or persons authorized to grant such certificate a true and full particular under the hand of the builder of such ship or vessel, or in case the want of such certificate can be satisfactorily accounted for, then to produce other sufficient evidence of the proper denomination, and of the time when, and the place where, such ship or vessel was built, and also an exact account of the tonnage of such ship or vessel, and shall also make and subscribe a declaration before the person or persons hereinbefore authorized to grant such certificate that the ship or vessel for which such certificate is required is the same with that which is so described by the builder as aforesaid.

19. * * * If the certificate of registry of any ship or vessel shall be lost or mislaid, so that the same cannot be found or obtained for the use of such ship or vessel when needful, and proof thereof shall be made to the satisfaction of the Registering-officer of the port at which the ship is registered, such officer shall and may, where the certificate shall have been lost or mislaid, permit such ship or vessel to be registered *de novo*, and a certificate thereof to be granted:

Provided always that if such ship or vessel be absent and far distant from the port to which she belongs, or by reason of the absence of the owner or owners, or of any other impediment, registry of the same cannot then be made in sufficient time, such Registering-officer shall and may grant a license for the present use of such ship or vessel, which license shall for the time and to the extent specified therein, and no longer, be of the same force and virtue as a certificate of registry granted under this Act:

Provided always that, if the certificate of registry shall at any time afterwards be found, the same shall be forthwith delivered to the proper Officers of Customs to be cancelled, and that no illegal use be made of the same, in default whereof the original certificate and the renewed certificate and license shall thenceforth become utterly void, and any person wilfully detaining the certificate so required to be cancelled, or making any illegal use thereof, shall be liable on conviction before any Justice in a penalty not exceeding five thousand rupees recoverable as aforesaid.

20. And whereas it is not proper that any person under any pretence whatever should detain the certificate of registry of any ship or vessel, or hold the same for any purpose other than the lawful use and navigation of the ship or vessel for which it was granted, it is therefore hereby enacted that—

in case any person who shall have received or obtained by any means or for any purpose whatever the certificate of the registry of any such ship or vessel (whether such person shall claim to be the master or to be the owner or one of the owners of such ship or vessel, or not,) shall wilfully detain and refuse to deliver up the same to the proper Officers of Customs, for the purposes of such ship or vessel, as occasion shall require, or to the person or persons having the actual command, possession and management of such ship or vessel as the ostensible and reputed master,

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or as the ostensible and reputed owner or owners thereof, it may and shall be lawful to and for any such last-mentioned person to make complaint on oath of such detainer and refusal to any Justice of the Peace residing near to the place where such detainer and refusal shall be ;

and on such complaint the said Justice shall and is hereby required, by warrant under his hand and seal, to cause the person so complained against to be brought before him to be examined touching such detainer and refusal ;

and if it shall appear to the said Justice on examination of such person or otherwise that the said certificate of registry is not lost or mislaid, but is wilfully detained by the said person, such person shall be subject on conviction before such Justice to a penalty not exceeding one thousand rupees, recoverable as aforesaid, and the said Justice shall, and he is hereby required to, certify the aforesaid detainer, refusal and conviction to the person or persons who granted such certificate of registry for such ship or vessel, who shall on the terms and conditions of law being complied with make registry of such ship or vessel *de novo*, and grant a certificate thereof conformably to law, notifying on the back of such certificate the ground upon which the ship or vessel was so registered *de novo* ;

and if the person who shall have detained and refused to deliver up such certificate of registry as aforesaid, or shall be verily believed to have detained the same, shall have absconded so that the said warrant of the Justice cannot be executed upon him, and proof thereof shall be made to the satisfaction of the Registering-officer of the port at which the ship or vessel was registered, it shall be lawful for the said officer to permit such ship or vessel to be registered *de novo*, or otherwise, in his discretion, to grant a license for the present use of such ship or vessel in like manner as is hereinbefore provided in the case wherein the certificate of registry is lost or mislaid.

21. * * * If any ship or vessel, after she shall have been registered pursuant to the directions of this Act, shall in any manner whatever be altered (a) so as not to correspond with all the particulars contained in the certificate of her registry, or if any alteration shall take place in the ownership of any ship or vessel, or of any share or shares thereof, in such cases such ship or vessel shall be registered *de novo* in manner hereinbefore required as soon as she returns to the port to which she belongs, or to any other port within the territories of the East India Company, on failure whereof such ship or vessel shall be deemed to be a ship or vessel not duly registered, and any person making use of a certificate for the purposes of any ship or vessel which has been granted in respect of the same, after the same ought to have been registered *de novo*, shall be liable on conviction before any Justice to a penalty not exceeding five thousand rupees recoverable as aforesaid.

22. And whereas great inconvenience may arise from the Registering-officers being served with subpoenas requiring them to bring with them and produce, on trials in Courts of law relative to the ownership of vessels or

Case law :—(a) No provision applicable to temporary additions, 14 B. 170 ; *strake*, meaning of, 14 B. 170.

otherwise, the declarations required to be taken by the owners thereof prior to the registering thereof, and the books of registry, or copies or extracts therefrom; and whereas it would tend much to the despatch of business if the attendance of such Registering-officers with the same upon such trials were dispensed with, it is therefore hereby enacted that—

the Registering-officer at any port or place, and the person or persons acting for them respectively, shall upon every reasonable request by any person or persons whomsoever, produce and exhibit for his, her or their inspection and examination any declaration made by any such owner or owners, and also any register or entry in any book or books of registry required, and shall upon every reasonable request by any person or persons whomsoever, permit him, her or them to take a copy or copies, or an extract or extracts thereof respectively, and that the copy and copies of any such oath or declaration, registry or entry shall, upon being proved to be true copy or copies thereof respectively, be allowed and received as evidence upon every trial at law, without the production of the original or originals, and without the testimony or attendance of any Registering-officer, or other person or persons acting for them respectively, in all cases, as fully and to all intents and purposes as such original or originals, if produced by any Registering-officer, or other person or persons acting for them, could or might legally be admitted or received in evidence.

23. * * * If any person or persons shall falsely make declaration to any of the matters hereinbefore required to be
 False declaration. verified by declaration, or if any person or persons shall counterfeit, erase, alter or falsify any certificate or other instrument in writing required or directed to be obtained, granted
 Falsifying documents. or produced by this Act, or shall knowingly or wilfully make use of any certificate or other instrument so counterfeited, erased, altered, falsified, or shall wilfully grant such certificate or other instrument in writing, knowing it to be false, such person or persons shall for every such offence be liable, on conviction before a Presidency Magistrate or a Magistrate of the first class, to a penalty not exceeding ten thousand rupees recoverable as aforesaid, and, if any such offence be committed by the owner of any ship or vessel, the certificate of such ship or vessel shall thenceforth be wholly void.

24. * * * When any ship or vessel duly registered under this Act, or sailing under the British Navigation Law, shall
 Ships of Native States. come to be owned by a Native Prince or State, or by any subject of such Native Prince or State as aforesaid, it shall be lawful for a Local Government to continue to such ship or vessel the privileges and advantages of a British ship for the purposes aforesaid by a pass to be * * * subscribed by a Secretary to Government, stating the voyage or voyages, for which the same is to have effect, and the period for which it is to last; and it shall be lawful for a Local Government to issue a similar pass conferring the privileges and advantages of a British ship for the purposes aforesaid under this Act to any ship or vessel built within the dominions of such Native Prince or State,

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and owned by such Prince or State or by any of their subjects: Provided always that the ships belonging to Native Princes or States or their subjects in respect of which passes may be granted under this Act shall, during the voyage or voyages, or the period for which any such pass shall be granted, be commanded by a subject of Her Majesty for whom the Governor General in Council has power to legislate.

25. * * * The fees demandable in respect of the granting of any certificate or pass under this Act shall be fixed from time to time according to the directions of the Governor General in Council, but so that the same shall not exceed the amount of fees now payable for registering or granting passes to ships or vessels at the different Presidencies.

26. * * * All ships or vessels registered under this Act shall be deemed to belong to the ports at which they shall be respectively registered. And all ships or vessels being registered or in respect of which passes may have been granted which are unexpired at the time of passing this Act shall for the purpose of being deemed British ships be deemed to belong to the ports at which they may have been registered, or, when passes shall have been granted which are unexpired, at which such passes may have been respectively granted. And such ships or vessels built and owned as required by the Statute 3 & 4 Vict., Ch. 56, shall continue subject to all the rules in force at the respective Presidencies before the passing of this Act, touching the registering, measurement, granting passes or other requisitions in respect of the same, and shall not be subject to the provisions of this Act, or any provisions of the Statute law, a compliance with which may heretofore have been necessary in order that ships or vessels built and owned as aforesaid might be deemed British ships for the purposes of trade.

27. The expressions "Local Government," "Local Governments of India" and "Government of the Presidency," as used in this Act, shall be deemed to include, and to have always included, every person who is a "Local Government" as defined in section 2, clause (10), of the General Clauses Act, 1868.

I of 1868.

PROCLAMATION.

The Governor General of India in Council hereby declares that all ships and vessels built or to be built within the limits of the Charter of the East India Company (as those limits are defined by the Statute 3rd and 4th of Queen Victoria, Cap. 56, entitled "An Act further to regulate the trade of ships built and trading within the limits of the East India Company's Charter"), being owned by Her Majesty's subjects for whom the said Governor General in Council has power to legislate, and belonging, under the provisions of the Act passed by the Governor General in Council No. X of 1841, to any ports in the territories under the Government of the East India Company, shall be deemed to be British ships for all purposes of trade within the said limits, including the Cape of Good Hope and the territories and dependencies thereof.

THE SCHEDULE.

(See section 8.)

ACT X OF 1841.

CERTIFICATE OF SURVEY.

Name of ship.	Port of intended Registry.	Official Number, if there has been any former Registry.	
Whether a Sailing or Steam Ship; and, if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
Number of Decks. Number of Masts. Rigged. Stern. Build. Galleries. Head. Framework.	Length from fore-part of stem, under the bowsprit, to the aft side of the head of the stern post. Main breadth to outside of plank. Depth in hold from tonnage deck to ceiling at midships Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards. Length of engine-room, if any.	Feet.	Tenths.

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign made.	When made.	Name and address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined).
			Engines.				
			Boilers.				

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PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTION ALLOWED.	No. of Tons.
Under Tonnage Deck. Closed-in spaces above the Tonnage Deck, if any. Space or spaces between Decks. Poop. Forecastle. Round-House. Other closed-in spaces, if any, as follows :		On account of space required for propelling power. On account of spaces occupied by Seamen or Apprentices and appropriated to their use and kept free from goods or stores of every kind not being the personal property of the Crew. These spaces are the following, namely :—	
Gross Tonnage.		Cubic metres.	
Deduction, as <i>per contra</i> .			
Registered Tonnage.		Total ...	

I, the undersigned _____
having surveyed the above-named Ship, hereby certify that the above
particulars are true.

Dated at _____
this _____ day of _____
_____ 18 _____

Surveyor.

THE REGISTRATION OF SHIPS ACT, 1850.

(ACT XI OF 1850.)

[Passed on the 15th March, 1850.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1850	XI	Registration of Ships ...	Rep. in pt., Act XIV of 1870.

An Act to amend Act X of 1841.

Preamble.

FOR amendment of Act X of 1841, it is enacted
as follows :—

1. [*Repeal of S 13 of Act X of 1841.*] *Repealed by Act XIV of 1870.*

2. The passes which, under section 24 of the said Act, may be
issued for conferring the privileges and advantages of
a British ship, in certain cases, to any ship or vessel
built within the dominions of a Native Prince or
State in subordinate alliance with, or having subsidiary
treaties with, the East India Company, may, after the

Passes under Act
X of 1841 to ships of
allied Native States
wherever built.

passing of this Act, be issued in the like cases, and under the same restrictions, to any ship or vessel belonging to any such Native Prince or State, or their subjects, wherever the same may have been built.

3. All ships or vessels, of whatever rig and of whatever tonnage, owned by British subjects, entitled to registry under Act X of 1841, or owned by such Native Princes or States, or by their subjects entitled to passes under Act X of 1841, as amended by this Act, employed only in coasting voyages, or between any port of the Continent of India and the Island of Ceylon, may be registered and obtain passes, and the tonnage may be marked, according to such rules as shall be made from time to time by the Governor or Governor in Council of each Presidency.

4. The owners of coasting vessels, registered under section 3 of this Act, shall pay for each certificate of registry—

for a vessel not exceeding the burthen of four tons, one rupee ;
 exceeding four tons and not exceeding twenty tons, five rupees ;
 exceeding twenty tons and not exceeding eighty tons, seven rupees ;
 exceeding eighty tons, for each ton two annas ; which fees shall be carried to the credit of the Government of the Presidency in which they are levied.

5. This Act shall be construed with and as part of Act X of 1841.

THE RESERVE FORCES ACT, 1888.

(ACT IV OF 1888.)

[Passed on the 2nd March, 1888.]

An Act to regulate Her Majesty's Indian Reserve Forces.

WHEREAS it is expedient to provide for the government, discipline and regulation of Her Majesty's Indian Reserve Forces ; It is hereby enacted as follows :—

Title and commencement. 1. (1) This Act may be called the Indian Reserve Forces Act, 1888 ; and

(2) It shall come into force on such day as the Governor General in Council may, by notification in the Gazette of India, appoint in this behalf.

Division of Reserve Forces into Active and Garrison Reserves. 2. The Indian Reserve Forces shall consist of the Active Reserve and the Garrison Reserve.

Locality of service of Reserves. 3. (1) A person belonging to the Active Reserve shall be liable to serve beyond the limits of British India as well as within those limits.

(2) A person belonging to the Garrison Reserve shall not be liable without his consent to serve beyond the limits of British India.

Power to make
rules for regulation
of Reserve Forces.

4. The Governor General in Council may make rules and orders for the government, discipline and regulation of the Indian Reserve Forces.

5. Subject to the provision of section 3 with respect to persons belonging to the Garrison Reserve, and to such rules and orders as may be made under section 4, a person belonging to the Indian Reserve Forces shall, as an officer or soldier, as the case may be, be subject to Military law in the same manner and to the same extent as a person belonging to Her Majesty's Indian Forces.

Punishment of
certain offences by
persons belonging
to Reserve Forces.

6. (1) If a person belonging to the Indian Reserve Forces—

- (a) when required by or in pursuance of any rule or order under this Act to attend at any place fails without reasonable excuse to attend in accordance with such requirement, or
- (b) fails without reasonable excuse to comply with any such rule or order, or
- (c) fraudulently obtains any pay or other sum contrary to any such rule or order,

he shall be liable—

- (i) on conviction by a Court-martial, to such punishment other than death, transportation or imprisonment for a term exceeding one year as such Court is by the Indian Articles of War Act V of 1869. empowered to award, or
- (ii) on conviction by a Magistrate of the first class, to imprisonment for a term which may extend, in the case of a first offence under this section, to six months, and, in the case of any subsequent offence thereunder, to one year.

(2) Where a person belonging to the Indian Reserve Forces is required by or in pursuance of any rule or order under this Act to attend at any place, a certificate purporting to be signed by an officer appointed by such a rule or order in this behalf, and stating that the person so required to attend failed to do so in accordance with such requirement, shall, without proof of the signature or appointment of such officer, be evidence of the matters stated therein.

(3) Any person charged with an offence under this section may be taken into and kept in either military or civil custody, or partly into and in one description of custody and partly into and in the other, or be transferred from one description of custody to the other.

7. Nothing in this Act or in any rule or order thereunder shall make any person transferred to the Indian Reserve Forces before the commencement of this Act subject, without his consent, to any of the provisions of this Act.

Effect of Act on
persons already in
the Reserves.

THE INDIAN SALT ACT, 1882.

(ACT XII OF 1882.)

[Passed on the 10th March, 1882.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
[For earlier enactments see Schedule.]			
1882	XII	Salt	Am., Act XX of 1884. " Act XIX of 1890. " Act XII of 1891. " Act X of 1908. " Act X of 1914.

An Act for regulating the duty on Salt, and for other purposes.

WHEREAS it is expedient to amend the law relating to the levy of
Preamble. duty on salt, and to the import and transit of salt, and
the manufacture of salt and saltpetre, into, over and
in British India ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title, com- 1. This Act may be called the Indian Salt Act,
men- 1882; [1] * * *

This section, sections 2, 7 and 8, and so much of this Act as refers
to offences against any of its provisions or against
Local extent. any rules made under it, extend to the whole of
British India ;

the rest of this Act extends to the territories for the time being
respectively administered by the Lieutenant-Governors of the North-
Western Provinces and the Punjab and the Chief Commissioners of
Oudh, the Central Provinces and Ajmere and Merwara, * * * * to
the Districts of the Patna Division, and to British territory under the
jurisdiction of the Agent to the Governor General in Central India ;

and any portion of this Act, other than the portions specified in the
second paragraph of this section, may be extended,
Power to extend by order of the Governor General in Council published
Act. in the Gazette of India, to any part of British India
other than the territories, * * and Districts mentioned in the third
paragraph of this section.

2. The enactments specified in the schedule hereto annexed are
Repeal of enact- repealed to the extent mentioned in the third column
ments. thereof ; but all rules made, licenses and passes
granted, prices and duties fixed, notifications publish-
ed and powers conferred under any such enactment and now in force

Leg. Changes :—[1] The words " and it shall come into force at once " were
repealed by Act X of 1914.

shall, so far as they are consistent with this Act, be deemed to have been respectively made, granted, fixed, published and conferred hereunder.

Interpretation- clause :	3. In this Act, unless there be something repugnant in the subject or context,—
"the said territories" :	the expression "the said territories" means the territories to which the section of this Act, in which that expression occurs, for the time being extends ;
"Assistant Commissioner" :	"Assistant Commissioner" means an Assistant Commissioner of Northern India Salt-revenue, and also includes any person invested by the Local Government with the powers of an Assistant Commissioner under this Act ;
"Salt-revenue officer" :	"Salt-revenue officer" means any officer of the Northern India Salt Department, and also includes any person invested by the Local Government with any of the powers of a Salt-revenue officer under this Act ;
"saltpetre" ;	"saltpetre" includes rasi, sajji and all other substances manufactured from saline earth, and kharinun and every form of sulphate or carbonate of soda ; and
"manufacture of salt" :	"manufacture of salt" includes the separation or purification of salt obtained in the manufacture of saltpetre, the separation of salt from earth or other substance so as to produce alimentary salt, and the excavation or removal of natural saline deposits or efflorescence.
"Kohat salt" :	"Kohat salt" means salt produced in the district of Kohat in the Punjab.

4. The powers and duties conferred and imposed by this Act on a Commissioner of a Division may, in places where there is no such Commissioner, be exercised and performed by such officer as the Governor General in Council may from time to time appoint in this behalf.

5. At the head of the administration of the salt-revenue under this Act there shall be an officer, called the Commissioner of Northern India Salt-revenue, who shall be appointed, and may be suspended or removed, by the Governor General in Council.

CHAPTER II.

MANUFACTURE AND REFINING OF SALT AND SALTPETRE.

Power of Governor General in Council—

6. The Governor General in Council may, from time to time, by rule—

(a) prohibit absolutely, or subject to such conditions as he thinks fit, the manufacture of salt, or the manufacture or refining of saltpetre, throughout the whole or any portion of the said territories ;

to regulate manufacture and refining of salt and saltpetre;

(b) fix fees for the following licenses, not exceeding in the case of each such license the amount hereinafter mentioned :—

	Rs.
License to manufacture and refine saltpetre and to separate and purify salt in the process of such manufacture and refining ...	50
License to manufacture saltpetre ...	2
License to manufacture sulphate of soda (<i>kharinun</i>) by solar heat in evaporating pans ...	10
License to manufacture sulphate of soda (<i>kharinun</i>) by artificial heat. ...	2
License to manufacture other saline substances ...	2

(c) determine the manner, time and place in and at which, and the persons by whom, any duty imposed hereunder shall be collected in the said territories ;

(d) define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or on behalf of Government, or of any manufactory and its appurtenances in or on which saltpetre is manufactured or refined, and regulate the possession, storage and sale of salt within such area ;

to regulate possession of salt in vicinity of places where saltpetre is manufactured ;

(e) define an area round any other place in which salt is manufactured, and regulate the possession, storage and sale of salt within such area.

CHAPTER III.

DUTY AND PRICE OF SALT.

Power of Governor General in Council—

7. The Governor General in Council may from time to time, by rule consistent with this Act,—

to impose a duty on manufacture of salt ;

(a) impose a duty, not exceeding three rupees per maund of 82½ pounds avoirdupois, on salt manufactured in, or imported by land into, any part of British India ;

to reduce or remit duties ;

(b) reduce or remit any duty so imposed, and reimpose any duty so reduced or remitted ;

to fix minimum price of salt excavated, etc., by Government.

(c) fix the minimum price at which salt excavated, manufactured or sold by or on behalf of the Government of India shall be sold.

In calculating the amount of duty payable under this section, fractions of quarter maunds may be reckoned as quarter maunds.

8. Subject to any general rules or special orders which the Governor General in Council may from time to time make in this behalf, the Local Government may from time to time, by notification in the local official Gazette, fix the minimum price at which salt excavated, manufactured or sold by or on behalf of such Local Government shall be sold.

Power of Local Government to fix minimum price of salt excavated, etc.

CHAPTER III-A.

INDUS PREVENTIVE LINE.

Power to define
zones and establish
chains of posts.

8-A. (1) The Governor General in Council may from time to time, by rule,—

- (a) define a zone of country not exceeding fifteen miles in breadth—
 - (i) along any portion of the river Indus and at such distance therefrom as he deems expedient, or
 - (ii) in any tract extending from that river to the western frontier of the Punjab,
- (b) extend any such zone so as to include any ferry, or any portion of a railway, canal or navigable river entering the zone, or any place where goods are loaded or unloaded into wagons or boats for the purpose of entering or leaving the zone, and
- (c) within such a zone establish a chain of posts extending along the zone.

(2) The establishment of a chain of posts under clause (c) of subsection (1) shall be deemed to be a public purpose within the meaning of the Land Acquisition Act, 1870.

X of 1870.

Effect of defining
a zone and establish-
ing a chain of posts.

8-B. When a zone has been defined and a chain of posts established under section 8-A, the Governor General in Council may from time to time, by rule,—

- (a) prohibit any person, except upon such conditions as may be prescribed in the rule, from having in his possession any Kohat salt within the limits of the zone, and,
- (b) so far as may be necessary for the prevention of the smuggling of Kohat salt across the chain of posts, control and regulate the passage of traffic across such chain, and provide for the searching of all persons and things crossing or being taken across such chain.

CHAPTER IV.

OFFENCES AGAINST THE SALT-REVENUE.

Penalties.

9. Whoever commits any of the following offences (namely) :—

- (a) does anything in contravention of this Act or of any rule made hereunder ;
- (b) evades payment of any duty or charge payable under this Act or any such rule (a) ; or
- (c) attempts to commit, or abets within the meaning of the Indian Penal Code the commission of any of the offences mentioned in clauses (a) and (b) of this section,

shall, for every such offence, be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both ;

Case law :—(a) Liability of licensee of salt-factory for evasion of salt duty, A.W.N. (1891) 181 ; law under which punishable for such evasion, L.B.R. (1893—1900) 262.

and the convicting Magistrate, on the application of the Assistant Commissioner or Salt-revenue officer, may declare to be confiscated all works, materials and implements constructed or prepared for the purpose of manufacturing or refining salt or saltpetre contrary to the provisions of this Act or any such rule.

10. Any person convicted of an offence under section 9, after having been previously convicted of an offence under that section or section 11 of the Inland Customs Act, 1875, or under any enactment repealed by that Act, shall be punished with imprisonment for a term which may extend to six months, in addition to the punishment which may be inflicted for a first offence under section 9 ;

Punishment on second and subsequent convictions.

VIII of 1875.

and every such person shall, upon every subsequent conviction of an offence under section 9, be liable to imprisonment for a term which may extend to six months, in addition to any term of imprisonment to which he was liable at his last previous conviction.

11. A charge of an offence under section 9, * * * * shall not be entertained except on the complaint of an Assistant Commissioner or other Salt-revenue officer not inferior in rank to a Sub-Inspector,

Charge by whom to be preferred.

and no such complaint shall be admitted unless it is preferred within six months after the commission of the offence to which it refers.

Limitation (a).

All such offences shall be tried by a Magistrate exercising powers not less than those of a Magistrate of the second class.

Jurisdiction.

12. All salt or saltpetre in respect of which any offence mentioned in section 9 has been committed, together with the vessels, packages or coverings in which such salt or saltpetre is contained, and the animals and conveyances used in carrying it, shall be liable to confiscation.

Confiscation of articles in respect of which offence committed.

When the article seized exceeds five seers in weight, the Commissioner of the Division in which the seizure takes place may, if satisfied on the report of any Salt-revenue officer, or on such inquiry as he thinks fit to make, that such offence has been committed, declare such article to be confiscated or impose such lesser penalty in lieu of confiscation as to him may seem fit.

If the article seized does not exceed five seers in weight, the Assistant Commissioner shall possess the same powers in regard to its disposal as by this section are conferred on the Commissioner of the Division in regard to quantities exceeding five seers, and may also confiscate any vessel, package or covering in which such article is contained.

Case-law :—(a) Complaint of criminal offence not being a suit or application within S. 18, Limitation Act, the peremptory terms of this section are not affected by that section, 20 B. 548.

Whenever such Commissioner declares under this section any article to be confiscated, he may also declare to be confiscated any vessel, package or covering in which such article is contained, and any animal or conveyance used in carrying it.

13. The Governor General in Council may, from time to time, by rule, direct that any Salt-revenue officer, not inferior in rank to an Assistant Inspector, if satisfied in such manner as such rule may prescribe that any offence mentioned in section 9 has been committed in respect of any dutiable salt, shall, instead of making a complaint to a Magistrate, or instituting proceedings with a view to confiscation, impose as a penalty an additional duty on such salt not exceeding the duty leviable thereon under Chapter III of this Act.

The imposition of every such penalty shall be at once reported, if the salt, in respect of which an offence has been committed, exceeds five seers in weight, to the Commissioner of the Division in which such penalty is imposed, and, if such salt does not exceed five seers in weight, to the Assistant Commissioner,

and shall require the sanction of the Commissioner or Assistant Commissioner, as the case may be, to whom it is so reported.

14. Any zamindar or other proprietor of land, and any agent of a zamindar or proprietor of land, who wilfully connives at any offence mentioned in section 9, shall for every such offence be punishable by any Magistrate exercising powers not less than those of a Magistrate of the second class with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

CHAPTER V.

POWERS OF STOPPAGE, SEARCH, SEIZURE AND ARREST.

15. Any Salt-revenue officer empowered in this behalf by the Local Government may at any time enter and search any place in which any article is manufactured or refined under a license granted under this Act or any rule made hereunder.

Power to search places where article is manufactured under license.

16. Any Salt-revenue officer may stop and detain any person whom he has reason to believe to be liable to punishment under this Act,

and may seize any salt or saltpetre in respect of which there is reason to believe that any offence mentioned in section 9 has been committed, or that any duty is payable, together with the vessels, packages or coverings in which such salt or saltpetre is contained, and the animals or conveyances used in carrying it.

17. Any Salt-revenue officer may arrest any person whom he has reason to believe to have committed any such offence as last aforesaid.

Power to arrest.

Procedure of
officer having reason
to believe unlawful
manufacture.

18. Whenever any Salt-revenue officer, not inferior in rank to a Sub-Inspector, has reason to believe that salt or saltpetre is being unlawfully manufactured, refined or stored in an unlicensed place,

such officer shall first record in writing (so far as may be practicable) (a) the name, residence and calling of the informant (if any); (b) the locality and description of the house, boat or place where the officer believes that the salt or saltpetre is being so manufactured, refined or stored; (c) the name of the person by or for whom the salt or saltpetre is so manufactured, refined or stored; and (d) the supposed quantity and description of the salt or saltpetre, with the grounds for believing the same to be unlawfully manufactured, refined or stored;

and may then summon in writing the officer in charge of the Police-station within whose jurisdiction the house, boat or place to be searched is situate to attend him;

and may then, after sunrise and before sunset (but always in the presence of an officer of Police not inferior in rank to a head constable), enter and search any house, boat or place in which there is reason to believe that salt or saltpetre is being so manufactured, refined or stored;

and, in case of resistance, may break open any door, and force and remove any other obstacle to such entry;

and may seize and carry away all salt and saltpetre so manufactured, refined or stored, and all materials used in the manufacture or refinement of such salt or saltpetre;

and may also detain and search and, if he thinks proper, arrest the occupier of the said house, boat or place, together with all persons concerned in the manufacture, refinement, or storing of such salt or saltpetre, or in the concealing thereof.

If the place so entered is an apartment in the actual occupancy of a woman who, according to the custom of the country, does not appear in public, the officer entering the same shall be guided by the rules prescribed for such cases in the Code of Criminal Procedure.

Before conducting a search under this section, the officer conducting it shall call upon two or more respectable inhabitants (if any) of the locality in which the house, boat or place is situate to attend and witness the search, and the search shall be made in the presence of such inhabitants (if any), and also (if practicable) of the occupant of the house, boat or place searched.

Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

19. Any officer in charge of a Police-station who, on application in writing made by a Salt-revenue officer to attend for any of the purposes specified in section 18, refuses or fails within a reasonable time so to attend or to depute a subordinate officer, not inferior in rank to a head constable, so to attend, shall for every such offence be punished with fine which may extend to five hundred rupees.

Failure of Police-
officer to attend.

20. Whenever a Salt-revenue officer under the rank of Assistant Commissioner arrests under this Act any person,

or seizes any article as liable to confiscation under this Act,

or enters any house, boat or place for the purpose of searching for any such article,

he shall (unless generally empowered by the Assistant Commissioner to send the person arrested to the Magistrate) within forty-eight hours next after such arrest, seizure or entry make a full report of all the particulars of such arrest, seizure or entry to his official superior for the information of the Assistant Commissioner.

Every officer making any arrest under this Act, or his official superior, shall, if generally empowered in this behalf by the Assistant Commissioner, either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the discharge of such person.

Every officer of Police attending any search made under section 18 shall report the same to his official superior.

21. Whenever the Assistant Commissioner is informed of the seizure of any article exceeding five seers in weight as liable to confiscation under this Act, he shall, with all convenient despatch, report the circumstances of the case to the Commissioner of the Division in which such seizure is made, who may thereupon proceed under section 12.

If the article seized does not exceed five seers in weight, such Assistant Commissioner may dispose of the case himself under the said section.

22. Any article in respect of which a penalty is imposed under section 13 may be detained pending the receipt of the order of the Commissioner of the Division or the Assistant Commissioner, as the case may be, on the report required by the same section :

Provided that, if the owner of any article so detained deposits the amount of such penalty with, and pays all ordinary duty and charges payable on, such article to the Salt-revenue officer detaining the same, such article shall be at once released.

When an article is so detained it shall on the receipt of the said order be dealt with in accordance with the rules made in this behalf hereunder.

When an article has been released under the second paragraph of this section, and the Commissioner of the Division or Assistant Commissioner, as the case may be, reduces or declines to sanction the penalty imposed in respect of such article, the amount refundable to the owner shall be paid to him on his applying therefor to the Assistant Commissioner within six months, to be computed (where the order has been made by the Commissioner of the Division) from the day on which the Assistant Commissioner has received such order, and (where the order has been made by the Assistant Commissioner) from the date of such order.

When any penalty, the amount of which has been deposited under the second clause of this section, is sanctioned,

or when any sum refundable under this section has not been claimed within the said period of six months,

the amount so in deposit, or the sum so refundable, shall be forfeited to Her Majesty, unless the Commissioner of Northern India Salt-revenue otherwise directs.

23. Whenever the Assistant Commissioner is informed of the arrest of any person, he shall (unless such person has been dealt with under the penultimate paragraph of section 20) either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the immediate discharge of such person.

Procedure in respect of person arrested.

Officers required to assist Salt-revenue officers.

Vexatious search, seizure, etc., by Salt-revenue officer.

24. All officers of Police, and all officers of Government engaged in the collection of land-revenue, are hereby empowered and required to assist the Salt-revenue officers in the execution of this Act.

25. Any Salt-revenue officer who—

- (a) without reasonable ground of suspicion searches or causes to be searched any house, boat or place ;
- (b) vexatiously and unnecessarily detains, searches or arrests any person ;
- (c) vexatiously and unnecessarily seizes the moveable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act ;
- (d) commits as such officer any other act to the injury of any person, when such officer has not reason to believe that such act is required for the execution of his duty,

shall for every such offence be punishable, by a Magistrate exercising powers not less than those of a Magistrate of the second class, with fine which may extend to five hundred rupees.

Any person wilfully and maliciously giving false information and so causing a search to be made under this Act shall be punishable, by a Magistrate exercising the same powers, with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to two years, or with both.

A Salt-revenue officer shall not be deemed to search or detain any person, or to seize the moveable property of any person, vexatiously and unnecessarily within the meaning of clause (b) or clause (c) of the first paragraph of this section if the search is authorized by any rule under clause (b) of section 8-B, and the detention or seizure is such as is necessary for the purposes of such search.

Power to regulate seizures and disposal of things seized.

26. The Governor General in Council may from time to time make rules consistent with this Act to regulate the seizure, disposal and destruction of things liable to be seized under this Act.

Such rules may, among other matters, provide—

- (a) that the owner or person having the charge of any animal seized and detained shall provide from day to day for its keep while detained, and that, if he omits to do so, such animal may be sold by public auction, and the expenses (if any) incurred on account of it defrayed from the proceeds of the sale ;
- (b) that when anything is seized and an order for its release is subsequently passed, and the owner does not, within a period to be fixed by such rules, appear to claim such thing and tender the duty, penalties and charges (if any) due in respect thereof, it may be sold by public auction, and such duty, penalties and charges defrayed from the proceeds of the sale ;
- (c) that the surplus proceeds of a sale under clause (a) or clause (b) of this section shall, unless the owner of the thing seized establishes his claim to such proceeds within a period, not less than three months, to be fixed by such rules, be forfeited to Her Majesty.

CHAPTER VI.

MISCELLANEOUS.

Power to prohibit import and transit of salt. 27. The Governor General in Council may, from time to time, by rule, prohibit absolutely, or subject to conditions, the importation of salt into, or the transit of salt over, the said territories or any part thereof.

Except in the case of a prohibition under this section, nothing in this Act shall affect the transit of salt into or from any of the said territories, from or into any other part of British India.

Nothing in this section shall be deemed to affect Chapter III-A of this Act or any rule under that Chapter.

Further matter for which Governor General in Council may make rules. 28. In addition to the rules which the Governor General in Council is hereinbefore empowered to make, he may from time to time make rules consistent with this Act to regulate the following matters, namely :—

- (a) the persons by whom, and the time, place and manner at or in which, anything to be done under this Act shall be done ;
- (b) the cases in which and the officers to whom, and the conditions subject to which, orders given by Salt-revenue officers under this Act shall be appealable ;
- (c) the fee to be charged on account of any license, pass, certificate, dākhilā, rawāna or other such document issued under this Act ;

and generally to carry out the provisions herein contained.

Publication of rules. 29. All rules made under this Act shall be published in the Gazette of India, and shall thereupon have the force of law.

30. Subject to the provisions herein contained, and to any rules for the time being in force made by the Governor General in Council, the Local Government or the Commissioner of the Northern India Salt-revenue may invest any person with the powers of an Assistant Commissioner under this Act, or with all or any of the powers hereinbefore conferred on Salt-revenue officers.

31. [Amendment of Madras Act VI of 1871.] Repealed by the Indian Salt Act (Amendment Act), 1890 (XIX of 1890), section 5.

SCHEDULE.

(See section 2.)

ENACTMENTS REPEALED.

Acts of the Governor General in Council.

No. and Year.	Short title.	Extent of repeal.
VIII of 1875 ...	The Inland Customs Act, 1875...	The whole.
II of 1876 ...	The Burma Land and Revenue Act, 1876.	Section 39, clause (b), and in clause (c) of the same section the words and letter "under clause (b)".
XVIII of 1877 ...	The Salt Act, 1877... ...	The whole.

Regulation.

No. and Year.	Short title.	Extent of repeal.
III of 1877 ...	The Ajmere Laws Regulation, 1877.	Sections 36 and 37.

Act of the Lieutenant Governor of Bengal in Council.

No. and Year.	Short title.	Extent of repeal.
VII of 1864 ...	The Salt Act, 1864... ...	Section 9.

THE SARAI ACT, 1867.

(ACT XXII OF 1867.)

[Passed on the 15th March, 1867.]

An Act for the regulation of public Sarais and Puraos.

WHEREAS it is expedient to provide for the regulation of public Sarais and Puraos: It is hereby enacted as follows:—

1. [Repeal of Bengal Regulation XIV of 1807, section 11, clause 5.] Rep. by the Repealing and Amending Act, 1891 (XII of 1891).

Interpretation-
clause.

2. In this Act, unless there be something repugnant in the subject or context,—

"sarai" means any building used for the shelter and accommodation of travellers, and includes, in any case in which only part of a building is used as a sarai, the part so used of such building. It also includes a purao so far as the provisions of this Act are applicable thereto :

"Keeper of a sarai."

"keeper of a sarai" includes the owner and any person having or acting in the care or management thereof :

"Magistrate of the District."

"Magistrate of the District" means the chief officer charged with the executive administration of a district in criminal matters whatever may be his designation :

Number.

[1] * * *

and, in any place in which this Act shall operate, "Local Government" shall mean the person administering executive government in such place, and shall include a Chief Commissioner and the Commissioner in Sind.

3. Within six months after this Act shall come into operation, the Magistrate of the District in which any sarai to which this Act shall apply may be situate shall, and from time to time thereafter such Magistrate may, give to the keeper of every such sarai notice in writing of this Act, by leaving such notice for the keeper at the sarai ; and shall by such notice require the keeper to register the sarai as by this Act provided.

Such notice may be in the form in the Schedule to this Act annexed or to the like effect.

4. The Magistrate of the District shall keep a register in which shall be entered by such Magistrate or such other person as he shall appoint in this behalf, the names and residences of the keepers of all sarais within his jurisdiction, and the situation of every such sarai.

No charge shall be made for making any such entry.

5. After one month after the giving of such notice to register as by this Act provided, the keeper of any sarai or any other person shall not receive any lodger or allow any person, cattle, sheep, elephant, camel or other animal, or any vehicle, to halt or be placed in such sarai until the same and the name and residence of the keeper thereof shall have been registered as by this Act provided.

Magistrate may refuse to register keeper not producing certificate of character.

6. The Magistrate of the District may, if he shall think fit, refuse to register as the keeper of a sarai a person who does not produce a certificate of character in such form and signed by such persons as the Local Government shall from time to time direct.

Leg. Change:—[1] Para re " Number," omitted by Act X of 1914.

Duties of keepers
of sarais.

7. The keeper of a sarai shall be bound—

- (1) when any person in such sarai is ill of any infectious or contagious disease, or dies of such disease, to give immediate notice thereof to the nearest police-station :
- (2) at all times when required by any Magistrate or any other person duly authorized by the Magistrate of the District in this behalf, to give him free access to the sarai and allow him to inspect the same or any part thereof :
- (3) to thoroughly cleanse the rooms and verandahs, and drains of the sarai, and the wells, tanks, or other sources from which water is obtained for the persons or animals using it, to the satisfaction of, and so often as shall be required by, the Magistrate of the District, or such person as he shall appoint in this behalf :
- (4) to remove all noxious vegetation on or near the sarai, and all trees and branches of trees capable of affording to thieves means of entering or leaving the sarai :
- (5) to keep the gates, walls, fences, roofs and drains of the sarai in repair :
- (6) to provide such number of watchmen as may, in the opinion of the Magistrate of the District, subject to such rules as the Local Government may prescribe in this behalf, be necessary for the safety and protection of persons and animals or vehicles lodging in, halting at or placed in the sarai ; and
- (7) to exhibit a list of charges for the use of the sarai at such place and in such form and languages as the Magistrate of the District shall from time to time direct.

8. The keeper of a sarai shall from time to time, if required so to do by an order of the Magistrate of the District served upon him, report, either orally or in writing as may be directed by the Magistrate to such Magistrate or to such person as the Magistrate shall appoint, every person who resorted to such sarai during the preceding day or night.

If written reports are required for any space of time exceeding a single day or night, schedules shall be furnished by the Magistrate of the District to the keeper.

The keeper shall from time to time fill up the said schedules with the information so required, and transmit them to the said Magistrate, in such manner and at such intervals as may from time to time be ordered by him.

9. If any sarai by reason of abandonment or of disputed ownership shall remain untenanted, and thereby become a resort of idle and disorderly persons, or become in a filthy or unwholesome state, or be complained of by any two or more of the neighbours as a nuisance, the Magistrate of the District, after due enquiry, may cause notice in writing to be given to the owner or to the person claiming to be the owner, if he be known and resident within the district, and may also cause such notice to be put on some conspicuous part of the sarai, requiring the persons concerned therein, whoever they may be, to secure, enclose, clean or clear the same ;

Power to order
reports from keepers
of sarais.

Power to shut up,
secure, clear and
clean deserted sarais.

and if such requisition shall not be complied with within eight days, the Magistrate of the District may cause the necessary work to be executed, and all expenses thereby incurred shall be paid by the owner of the sarai, and shall be recoverable like penalties under this Act, or, in case of abandonment or disputed ownership of the sarai, by the sale of any material found therein.

10. If a sarai or any part thereof be deemed by the Magistrate of the District to be in a ruinous state, or likely to fall, or in any way dangerous to the persons or animals lodging in or halting at the sarai, he shall give notice in writing to the keeper of the sarai requiring him forthwith to take down, repair or secure (as the case may be) the sarai or such part thereof as the case may require.

If the keeper do not begin to take down, repair or secure the sarai, or such part as aforesaid within three days after such notice, and complete such work with due diligence, the Magistrate shall cause all or so much of the sarai as he shall think necessary to be taken down, repaired or otherwise secured.

All the expenses so incurred by the Magistrate shall be paid by the keeper of the sarai, and shall be recoverable from him as hereinafter mentioned.

11. If any such sarai or any part thereof be taken down by virtue of the powers aforesaid, the Magistrate of the District may sell the materials thereof, or so much of the same as shall be taken down under the provisions of the last preceding section, and apply the proceeds of such sale in payment of the expenses incurred, and shall restore the overplus (if any) arising from such sale to the owner of such sarai on demand, and may recover the deficiency (if any) as if the amount thereof were a penalty under this Act.

12. Whoever, being the keeper of any sarai, suffers the same to be in a filthy and unwholesome state, or overgrown with vegetation, or after the expiration of two days from the time of his receiving notice in writing from the Magistrate of the District to cleanse or clear the same, or after he shall have been convicted of suffering the same to be in such a state or so overgrown as aforesaid, shall allow the same to continue in such state, or so overgrown, shall be liable to the penalties provided in section 14 of this Act:

Provided that the Magistrate of the District may, in lieu of enforcing such daily penalty, enter on and cleanse or clear the said sarai, and the expense incurred by the Magistrate in respect thereof shall be paid to him by the keeper, and shall be recoverable as by this Act provided in the case of penalties.

13. The Local Government may from time to time make regulations for the better attainment of the objects of this Act, provided that such rules be not inconsistent with this Act or with any other law for the time being in force, and may from time to time repeal, alter and add to the same.

All regulations made under this Act and all repeals thereof, and alterations and additions thereto, shall be published in the local official Gazette.

14. If the keeper of a sarai offend against any of the provisions of this Act or any of the regulations made in pursuance of this Act, he shall for every such offence be liable on conviction before any Magistrate to a penalty not exceeding twenty rupees, and to a further penalty not exceeding one rupee a day for every day during which the offence continues:

Penalty for infringing Act or regulations.

Provided always that this Act shall not exempt any person from any penalty or other liability to which he may be subject, irrespective of this Act.

All penalties imposed under this Act may be recovered in the same manner as fines may be recovered under section 61 of the Code of XXV of 1861. Criminal Procedure.

15. Where a keeper of a sarai is convicted of a third offence under this Act, he shall not afterwards act as keeper of a sarai without the license in writing of the Magistrate of the District, who may either withhold such license or grant the same on such terms and conditions as he may think fit.

Conviction for third offence to disqualify persons from keeping sarais.

16. No part of this Act, except section 8, shall apply to any sarai which may be under the direct management of the Local Government or of any Municipal Committee.

17. This Act shall in the first instance extend only to the territories under the government of the Lieutenant Governor of the North-Western Provinces of the Presidency of Fort William in Bengal.

Extent of Act.

But it shall be lawful for the Local Government, by notification in the local Gazette, to extend this Act, *mutatis mutandis*, to any other part of the territories which are or may be vested in Her Majesty or Her Successors by the Statute 21 & 22 Vict., cap. 106 (*an Act for the better government of India*), except the towns of Calcutta, Madras and Bombay.

Power to Governor General in Council to extend this Act.

Short title.

18. This Act may be called the Sarais Act, 1867.

SCHEDULE.

FORM OF NOTICE.

Take notice that on the day of 1867, an Act called the Sarais Act, 1867, was passed, and that, before the day of 18 , you, being keeper of a sarai [or purao] within [here state the district over which the jurisdiction of the Magistrate giving the notice extends], must have your sarai [or purao] registered, and that the registers to be kept at [here state where the register is to be kept], and that, if you do not have your sarai [or purao] so registered, you will be liable to a penalty not exceeding twenty rupees and to a further penalty not exceeding one rupee a day for every day during which the offence continues, and that on your applying to [here give the name and address of the person to keep the register] he will register your sarai [or purao] free of all charge to you.

Dated the day of 18 .

THE GOVERNMENT SAVINGS BANKS ACT, 1873.

(ACT V OF 1873.)

[Passed on the 28th January, 1873.]

HISTORICAL MEMOIR.

Year	No. of Act.	Name of Act.	How affected.
1855	XXVI	Government Savings Banks ...	Rep., Act V of 1873.
1873	Y	Government Savings Banks ...	Rep. in pt., Act XII of 1873. Do. Act XVI of 1874. Do. Act XII of 1891. Am., Act XIII of 1916. .. Act XVII of 1917.

An Act to amend the Law relating to Government Savings Banks.

WHEREAS it is expedient to amend the law relating to the payment of deposits in Government Savings Banks; It is hereby enacted as follows:—

Preliminary.

Short title.

1. This Act may be called the Government Savings Banks Act, 1873.

Local extent.

It extends to the whole of British India.

[Commencement.] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

2. [Repeal of Act XXVI of 1855.] *Rep. by the Repealing Act, 1873 (XII of 1873).*

Interpretation-clause.

3. In this Act—

"depositor" means a person by whom, or on whose behalf, money has been heretofore, or shall be hereafter, deposited in a Government Savings Bank; and "deposit" means money so deposited:

"Secretary" includes every person empowered to manage a Government Savings Bank; and

[1] "minor" means a person who is not deemed to have attained his majority under the Indian Majority Act, 1875 [1].

Deposits belonging to the Estates of deceased Persons.

Payment on death of depositor.

4. If a depositor dies, leaving in a Government Savings Bank a sum of money not exceeding [2] three thousand rupees [2],

and if probate of his will or letters of administration of his estate, or a certificate granted under Act No. XXVII of 1860 (for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons), is not produced to the

Leg. Changes:—[1] Substituted by Act XIII of 1916. [2] The words "three thousand rupees" were substituted for the words "one thousand rupees" by Act XVII of 1917.

Secretary of such Bank within three months of the death of the said depositor,

the Secretary of such Bank may pay the said sum of money to any person appearing to him to be entitled to receive it; or to administer the estate of the deceased.

Payment to be a discharge. 5. Such payment shall be a full discharge from all further liability in respect of the money so paid :

But nothing herein contained precludes any executor or administrator, or other representative of the deceased, from recovering from the person receiving the same the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.

And any creditor or claimant against the estate of the deceased may recover his debt or claim out of the money paid under this Act, or [1] * * * [2] Act No. XXVI of 1855, [2] to any person, and remaining in his hands unadministered, in the same manner and to the same extent as if the latter had obtained letters of administration of the estate of the deceased.

6. The Secretary of any such Bank may take such security as he thinks necessary from any person to whom he pays any money under section 4 for the due administration of the money so paid,

and he may assign the said security to any person interested in such administration.

7. For the purpose of ascertaining the right of the person claiming to be entitled as aforesaid, the Secretary of any such Bank may take evidence on oath or affirmation according to the law for the time being relating to oaths and affirmations.

Any person who, upon such oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of an offence under section 193 of the Indian Penal Code (a).

XLV o 1860.

8. Where the amount of the deposit belonging to the estate of a deceased depositor does not exceed [3]three thousand rupees [3], such amount shall be excluded in computing the fee chargeable, under the Court Fees Act, 1870, on the probate, or letters of administration, or certificate (if any), granted in respect of his property :

VII of 1870.

Provided that the person claiming such probate or letters or certificate shall exhibit to the Court authorised to grant the same a certificate of the amount of the deposit in any Government Savings Bank belonging

Leg. Changes :—[1] Repealed by Act XII of 1891. [2] Act XXVI of 1855 was repealed by S. 2 of this Act. [3] The words "three thousand rupees" were substituted for the words "one thousand rupees" by Act XVII of 1917.

Case-law :—(a) Essentials, 10 C.W.N. 1099; false evidence to be intentionally false, Rat. Un. Cr. O. 2; making of false statement, when legally a giving of false evidence, 2 W.R. Cr. 47.

to the estate of the deceased. Such certificate shall be signed by the Secretary of such Bank, and the Court shall receive it as evidence of the said amount.

Act not to apply to deposits belonging to estates of European soldiers or deserters.

9. Nothing hereinbefore contained applies to money belonging to the estate of any European officer, non-commissioned officer or soldier dying in Her Majesty's service in India, or of any European who, at the time of his death, was a deserter from the said service.

Deposits belonging to Minors.

10. Any deposit made by, or on behalf of, any minor may be paid to him personally if he made the deposit, or to his guardian for his use if the deposit was made by any person other than the minor, together with the interest accrued thereon.

Payment of deposits to minor or guardian.

The receipt of any minor or guardian for money paid to him under this section shall be a sufficient discharge therefor.

Legalization of like payments heretofore made.

11. All payments of deposits heretofore made to minors or their guardians by any Secretary of a Government Savings Bank shall be deemed to have been made in accordance with law.

Deposits belonging to Lunatics^(a).

Payment of deposits belonging to lunatics.

12. If any depositor becomes insane or otherwise incapable of managing his affairs,

and if such insanity or incapacity is proved to the satisfaction of the Secretary of the Bank in which his deposit may be, such Secretary may, from time to time, make payments out of the deposit to any proper person,

and the receipt of such person, for money paid under this section, shall be a sufficient discharge therefor.

Where a committee or manager of the depositor's estate has been duly appointed, nothing in this section authorizes payments to any person other than such committee or manager.

Deposits made by Married Women.

13. Any deposit made by or on behalf of a married woman, or by or on behalf of a woman who afterwards marries, may be paid to her, whether or not the Indian Succession Act, 1865, section 4, applies to her marriage; and her receipt for money paid to her under this section shall be a sufficient discharge therefor.

Payment of married women's deposits.

X of 1865.

Rules.

Rules regulating certificates under section 8, and payments under section 10, 12 or 13.

14. All certificates under section 8, and all payments under section 10, section 12 or section 13, shall be respectively granted and made by the Secretary of the Bank, subject to such rules consistent with this Act as the Governor General in Council may, from time to time, prescribe.

Case-law :—(a) Degree of unsoundness of mind, 18 M. 572.

THE SCHEDULED DISTRICTS ACT, 1874.

(ACT XIV OF 1874.)

[Passed on the 8th December, 1874.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1874	XIV	Scheduled Districts ...	Rep. in pt., Act XIX of 1879. Do. Act XIV of 1881. Do. Act XXV of 1881. Do. Act VIII of 1883. Do. Act VII of 1885. Do. Act XX of 1890. Do. Act VI of 1904. Do. Reg. I of 1902. Rep. in pt. and Am., Act XII of 1891. Am., Act II of 1893.

An Act to ascertain the enactments in force in various parts of British India, and for other purposes.

WHEREAS various parts of British India have never been brought within, or have from time to time been removed from, the operation of the general Acts and Regulations and the jurisdiction of the ordinary Courts of Judicature ;

And whereas doubts have arisen in some cases as to which Acts or Regulations are in force in such parts, and in other cases as to what are the boundaries of such parts : And whereas among such parts are the territories specified in the first schedule hereto annexed, and it is expedient to provide readier means than now exist for ascertaining the enactments in force in such territories and the boundaries thereof, and for administering the law therein :

And whereas it is expedient to declare that certain Acts are in force in a tract of land lying between the Railway Station at Satra and the eastern boundary of the Jabalpur Division ;

It is hereby enacted as follows :—

Short title. 1. This Act may be called the Scheduled Districts Act, 1874.

Local extent (b). This Act extends in the first instance to the whole of British India other than the territories mentioned in the first schedule hereto annexed, and it shall come into force in each of the Scheduled Districts on the issue of a notification under section 3 relating to such District.

Interpretation-clause. In this Act the term "Scheduled Districts" means the territories mentioned in the first schedule hereto annexed ; and, from the date fixed in the resolution next hereinafter mentioned, it shall also include any other territory to

Case-law :—(a) Scope and nature of, 24 A. 348—A.W.N. (1902) 86. (b) If Act applies to Sonthal Parganas, 18 C.W.N. 994—42 C. 116 ; 16 M.L.T. 105—27 M.L.J. 459 (P.C.).

S. 8-A Act XIV of 1874 (SCHEDULED DISTRICTS). Scheduled Dts.

which the Secretary of State for India, by resolution in Council, may declare the provisions of the 33rd of Victoria, chapter 3, section 1, to be applicable.

Repeal of enactments.

2. The enactments mentioned in the second schedule hereto annexed shall be repealed.

Notification of enactments in force in Scheduled Districts.

3.(a) The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the Gazette of India and also in the local Gazette (if any)–

- (a) declare what enactments are actually in force in any of the Scheduled Districts, or in any part of any such District,
- (b) declare of any enactment that it is not actually in force in any of the said Districts or in any part of any such District,
- (c) correct any mistake of fact in any notification issued under this section :

Provided that a declaration once made under clause (a) or clause (b) of this section shall not be altered by any subsequent declaration other than a declaration under clause (c) of this section.

4. On the issue, under section 3, of a notification declaring what enactments are in force, or not in force, in any Scheduled District, the enactments so notified shall be deemed to be in force or not in force, according to the tenor of the notification, in such District, and every such notification shall be binding on all Courts of law (b).

5. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification (c) in the Gazette of India and also in the local Gazette (if any), extend to any of the Scheduled Districts, or to any part of any such District, any enactment which is in force in any part of British India at the date of such extension.

[1] 8-A. In declaring an enactment in force in a Scheduled District or part thereof under section 3 of this Act, or in extending an enactment to a Scheduled District (d) or part thereof under section 5 of this Act, the Local Government, with the previous sanction of the Governor General in Council, may declare the operation of the

Modification of enactments in their application to Scheduled Districts.

Leg. Changes:—[1] Inserted by Act XII of 1891.

Case-law:—(a) Scope of, 24 A. 348 = A.W.N. (1902) 86. (b) Jurisdiction of N.W.P. High Court, 24 A. 348 = A.W.N. (1902) 86 ; A.W.N. (1892) 236 ; appeal to High Court on conviction by agent to Governor of Bombay in Kandesh, 15 B. 505 ; but see 25 B. 667 ; revision from sentence of imprisonment forced under Act XXXVII of 1855, S. 4 (1), 12 C. 536 ; applicability of Penal Code and Crim. Pro Code to Laccadive Islands, 13 M. 353 = 2 Weir 1 ; Acts come into force in Scheduled Districts only on notification by Government, 13 M. 353 = 2 Weir 1 ; jurisdiction of High Court to transfer case from Agent to Governor in Agency tracts of Ganjam and Vizagapatam, 14 M. 121 = 2 Weir 7 ; appeal to High Court from *ex parte* order appointing guardian of infant, 18 M. 227. (c) Scope of, 24 A. 348 = A.W.N. (1902) 86 ; enactments extended to Kumaon, 24 A. 348 = A.W.N. (1902) 86 ; execution of decree, 15 C. 365. (d) This Act cannot be extended to new subject-matter ; power of High Court to transfer cases, 10 B. 274 ; see, also, Rat. Un. Cr. C. 825 ; 96 P.L.R. 101.

Scheduled Dts. ACT XIV OF 1874 (SCHEDULED DISTRICTS). S. 8

enactment to be subject to such restrictions and modifications as that Government thinks fit.

Appointment of officers and regulation of their procedure.

6. The Local Government may from time to time—

- (a) appoint officers (a) to administer civil and criminal justice and to superintend the settlement and collection of the public revenue, and all matters relating to rent, and otherwise to conduct the administration, within the Scheduled Districts,
- (b) regulate the procedure of the officers so appointed; but not so as to restrict the operation of any enactment for the time being in force in any of the said Districts,
- (c) direct by what authority any jurisdiction, powers or duties incident to the operation of any enactment for the time being in force in such District shall be exercised or performed (b).

7. All rules heretofore prescribed by the Governor General in Council or the Local Government for the guidance of officers appointed within any of the Scheduled Districts for all or any of the purposes mentioned in section 6, and in force at the time of the passing of this Act, shall continue to be in force unless and until the Governor General in Council or the Local Government, as the case may be, otherwise directs.

All existing officers so appointed previous to the date on which this Act comes into force in such District shall be deemed to have been appointed hereunder.

8. Whenever any question arises as to the line of boundary between any of the Scheduled Districts and other territory such officer as the Local Government or (where the said District and the other territory are not subject to the same Local Government) as the Governor General in Council from time to time appoints, may consider and determine such line of boundary;

and the order made thereon by such officer, if confirmed by the Government which appointed him, shall be conclusive in all Courts of Justice.

9. Any person liable to be imprisoned or to be transported beyond sea under any order or sentence passed by any officer appointed under section 6 may (subject to such rules as the Governor General in Council may from time to time prescribe in this behalf) be imprisoned in such jail or transported to such place as the Local Government directs.

Case-law :—(a) Resident at Aden appointed to be Sessions Judge for Perim, 10 B. 274. (b) Jurisdiction of Commissioner of Kumaon, 24 A. 348—A.W.N. (1902) 86; jurisdiction of Agent for Mewar Estates to try offence committed at Boripanda in Naba State, 18 Bom. L.R. 789; power of High Court to withdraw operation of Or. P.C. in North Cochar Hills, 26 O. 874—3 C.W.N. 564; power of High Court to call for additional evidence on appeal by accused, 18 Bom. L.R. 789—3 Bom. Or. C. 208—17 Cr. L.J. 538—36 Ind. Cas. 581; appeal can't be dismissed with bare endorsement on memo but must be heard in Vizagapatam Agency tracts, 28 M. 404; appeal from order of remand, 22 A. 405—A.W.N. (1900), 157.

1st Sch. ACT XIV OF 1874 (SCHEDULED DISTRICTS). Scheduled Dts.

Extension to
Satna strip of Acts
relating to public
gambling and pan-
dhari-tax.

10. Acts No. III of 1867, [1] * * * and No. XXV of 1869 are hereby declared to be in force in the tract of land ceded to the British Government in the year 1863 and lying between the Railway Station at Satna and the eastern boundary of the Jabalpur District.

Saving of criminal
jurisdiction over
European British
subjects, and saving
of other laws.

11. Nothing contained in this Act or in any notification issued under the powers hereby conferred shall be deemed—

- (a) to affect the criminal jurisdiction of any Court over European British subjects, or
- (b) to affect any law other than laws contained in Acts or Regulations or in rules made in exercise of powers conferred by such Acts or Regulations.

THE FIRST SCHEDULE.

(See section 1.)

PART I.

SCHEDULED DISTRICTS, MADRAS.

I.—In Ganjam.

- (1) The Gumsur Maliahs, including Chokapad.
- (2) The Surada Maliahs.
- (3) The Chinna Kimedi Maliahs.
- (4) The Pedda Kimedi Maliahs.
- (5) The Bodaguda Maliahs.
- (6) The Surangi Maliahs.
- (7) The Parla Kimedi Maliahs.
- (8) The Muttas of Korada and Ronaba (otherwise called Srikarma).
- [(9) The Chighatti Maliah.] Repealed by Act XII of 1891.
- (10) The Jurada Maliah.
- (11) The Jалантра Maliah.
- (12) The Mandasa Maliah.
- (13) The Budarasinghi Maliah.
- (14) The Kuttingia Maliah.

II.—In Vizagapatam.

- (1) The Jeypur Zamindari.
- (2) Golconda Hills, west of the River Boderu.
- (3) The Madugol Maliahs.
- (4) The Kasipur Zamindari.
- (5) The Panohipenta Maliahs.
- (6) Mondemkolla, in the Merangi Zamindari.
- (7) The Konda Mutta of Merangi.
- (8) The Gumma and Konda Muttas of Kurpam.
- (9) The Kottam, Ram and Konda Muttas of Palkonda.

Leg. Changes :—[1] So much of section as relates to Act XIV of 1874 repealed by Act VI of 1902.

Scheduled Dts. ACT XIV OF 1874 (SCHEDULED DISTRICTS). 1st Sch.

III.—In the Godavari District.

- (1) The Bhadrachalam Taluq.
- (2) The Rakapilli Taluq.
- (3) The Rampa Country.

IV.—In the Indian Ocean.

The Laccadive Islands, including Minicoy.

PART II.

SCHEDULED DISTRICTS, BOMBAY.

- I.—The Province of Sindh.
- II.—[*The Panch Mahals.*] *Repealed by Act VII of 1885, with effect from the 1st May, 1885.*
- III.—Aden.
- IV.—The villages belonging to the following Mehwassi Chiefs :—
 - (1) The Parvi of Kathi.
 - (2) The Parvi of Nal.
 - (3) The Parvi of Singpur.
 - (4) Walvi of Gaothali.
 - (5) The Wassowa of Chikhli.
 - (6) The Parvi of Nawalpur.

PART III.

SCHEDULED DISTRICTS, BENGAL.

- I.—The Jalpaiguri and Darjeeling Districts [1].
- II.—The Hill Tracts of Chittagong.
- III.—The Santhal Parganas.
- IV.—The Chutia Nagpur Division.
- V.—The Mahal of Angul.[2]

PART IV.

SCHEDULED DISTRICTS, NORTH-WESTERN PROVINCES.

- I.—[*The Jhansi Division, comprising the Districts of Jhansi, Jalaun and Lalatpur.*] *Repealed by Act XX of 1890, S. 8 (1), with effect from the 1st April, 1891.*
- II.—The Province of Kumaon and Garhwal.
- III.—The Tarai Parganas, comprising—Bazpur, Kashipur, Jaspur, Rudarpur, Gadarpur, Kilpuri, Nanak-Mattha and Bilheri.
- IV.—In the Mirzapur District—
 - (1) The tappas of Agori Khas and South Kon in the Pargana of Agori.
 - (2) The tappa of British Singrauli in the Pargana of Singrauli.
 - (3) The tappas of Phulwa, Dudhi and Barha in the Pargana of Bichipar.
 - (4) The portion lying to the South of the Kaimor Range.

Leg. Changes:—[1] Substituted by Act XII of 1891. [2] Substituted by Act XXV of 1881.

1st Sch. ACT XIV OF 1874 (SCHEDULED DISTRICTS). Scheduled Dts.

[V.—*The Family Domains of the Maharaja of Benares, comprising the following parganas :—Bhadohi and Kheyra Mangror in the Mirzapur District ; Kaswa Raja in the Benares District.*] *Repealed by Act XIV of 1861, S. 14, with effect from the 24th September, 1881.*

VI.—The tract of country known as Jaunsar Bawar in the Dehra Dun District.

PART V.

SCHEDULED DISTRICTS, PUNJAB.

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, Dera Ghazi Khan, Labaul and Spiti.

PART VI.

SCHEDULED DISTRICTS, CENTRAL PROVINCES.

Chhattisgarh Zamindaris, viz. :—

1. Khariar.	13. Matin.
2. Bindra Nawagarh.	14. Uprora.
3. Sahezipur.	15. Kenda.
4. Gandai.	16. Lapha.
5. Silheti.	17. Chhuri.
6. Barbaspur.	18. Korba.
7. Thakurtola.	19. Chapa.
8. Lohara.	20. Bora Sambhar.
9. Gondardehi.	21. Phuljhar.
10. Fingeswar.	22. Kolabira.
11. Pandaria.	23. Rampur.
12. Pendra.	

Chanda Zamindaris.

1. Ahiri.	11. Muramgaon.
2. Ambagarh Chauki.	12. Panabaras.
3. Aundhi.	13. Palasgarh.
4. Dhanora.	14. Rangi.
5. Dudhmala.	15. Sirsundi.
6. Gewarda.	16. Sonsari.
7. Jharapapra.	17. Chandala.
8. Khutgaon.	18. Gilgaon.
9. Koracha.	19. Pawi Mutanda.
10. Kotgal.	20. Pategaon.

Chhindwara Jagirdaris.

1. Harai.	7. Pachmarhi.
2. Chhater.	8. Partabgarh.
3. Gorakbghat.	9. Almod.
4. Gorpani.	10. Sonpur.
5. Baktagarh.	11. Bariam Pagara.
6. Bardagarh.	

PART VII.

The Chief Commissionership of Coorg.

Scheduled Dts. ACT XIV OF 1874 (SCHEDULED DISTRICTS). 2nd Sch.

PART VIII.

The Chief Commissionership of the Andaman and Nicobar Islands.

PART IX.

The Chief Commissionership of Ajmere and Merwara.

PART X.

The Chief Commissionership of Assam.

PART XI.

The Hill Tracts of Arakan.

PART XII.

The Pargana of Manpur.

PART XIII.

[The Cantonment of Morar.] Repealed by Act XII of 1891.

THE SECOND SCHEDULE.

(See section 2.)

Number and year.	Title.
XI of 1846. ...	An Act for the exemption of certain Territory in the Province of Candeish and the Zillah Ahmednuggur from the operation of the General Regulations.
XXXVII of 1855 ...	An Act to remove from the operation of the General Laws and Regulations certain Districts inhabited by Sonthals and others, and to place the same under the superintendence of an officer to be specially appointed for that purpose.
X of 1857 ...	An Act to amend Act XXXVII of 1855.
[1] * *	* * *
XIV of 1861 ...	An Act to remove certain tracts of Country in the Rohilkund Division from the jurisdiction of the tribunals established under the General Regulations and Acts.
XIX of 1864 ...	An Act to remove certain tracts of Country in the District of Mirzapore from the jurisdiction of the local Courts.
IV of 1868 ...	An Act to exempt certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force in that Presidency.
XXII of 1869 ...	An Act to remove the Garo Hills from the jurisdiction of the tribunals established under the General Regulations and Acts for other purposes.
[1] * *	* * *

Leg. Changes :—[1] The entries re Act XXII of 1860 and Bengal Act IV of 1863 were repealed by Reg. I of 1900.

THE SEA CUSTOMS ACT, 1878.

(ACT VIII OF 1878.)

[Passed on the 8th March, 1878.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
[N.B —For earlier enactments, <i>vide</i> Schedule to this Act, <i>infra</i> .]			
1878	VIII	Sea Customs	... Rep. in part, Acts XVI of 1904, III of 1914, IV of 1914, X of 1914, and IV of 1916, Supplemented, Act VIII of 1896, Application of S. 150 extended, Act XIII of 1890, S. 9. Applied with modifications, Act II of 1896. Amended, Acts IX of 1885, II of 1887, IV of 1889, VIII of 1889, IX of 1891, XII of 1891, VIII of 1894, V of 1913, IV of 1914, XII of 1914, IX of 1915 and XIII of 1919.

An Act to consolidate and amend the law relating to the levy of Sea Customs-duties.

WHEREAS it is expedient to consolidate and amend the law relating to the levy of Sea Customs-duties; It is enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called the Sea Customs Act, 1878.

Local extent.
Commencement.

It extends to the whole of British India, and shall come into force on the first day of April, 1878.

Repeal of enactments.

2. The Acts mentioned in [1] Part I of the Schedule [1] hereto annexed are repealed to the extent specified therein.

References to enactments repealed.

All references to any of the said Acts, in Acts passed subsequently thereto, shall be read as if made to the corresponding provisions of this Act.

All appointments, rules, declarations, exemptions and delegations made, powers conferred, forms and conditions prescribed, values, fees, rates and periods fixed, and notifications, instructions, directions, prohibitions, passes and licenses issued, under any Act hereby repealed shall, if the

Leg. Changes :— [1] Substituted by Act XII of 1891.

same are in force at the time this Act comes into force, be deemed to have been respectively made, conferred, prescribed, fixed and issued under this Act, in so far as they are consistent herewith.

Interpretation.	3. In this Act, unless there be something repugnant in the subject or context,—
"Chief Customs-authority."	(a) "Chief Customs-authority" denotes the person authorised to exercise, subject to the Local Government, the chief control in matters relating to Sea-customs in any place in which this Act operates :
"Chief Customs-officer."	(b) "Chief Customs-officer" denotes the Chief Executive Officer of Sea-customs for any Port to which this Act applies :
"Customs-collector."	(c) "Customs-collector" includes every officer of Customs for the time being in separate charge of a Custom-house, or duly authorized to perform all, or any special, duties of an officer so in charge :
"Customs-port."	(d) "Customs-port" means any place except Aden declared under section 11 to be a Port for the shipment and landing of goods :
"Foreign Port."	(e) "Foreign Port" means Aden and any place beyond the limits of British India.
"Vessel."	(f) "Vessel" includes anything made for the conveyance by water of human beings or property :
"Coasting-vessel."	(g) "Coasting-vessel" denotes any vessel proceeding from one Customs-port to another Customs-port, whether touching at any intermediate Foreign Port or not, or proceeding from or to a Customs-port to or from a place declared to be a Port under section 12 :
"Master."	(h) "Master," when used in relation to any vessel, means any person, except a Pilot or Harbour-Master having command or charge of such vessel :
"Warehousing port."	(i) "Warehousing port" means any Customs-port declared under section 14 to be a warehousing port :
"Warehouse."	(j) "Warehouse" denotes any place appointed or licensed under section 15 or section 16.

4. When any person is expressly or impliedly authorized by the owner of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, and such authorization is approved by the Customs-collector, such person shall, for such purposes, be deemed to be the owner of such goods.

5. Anything which a Master is required or empowered to do under this Act may, with the express or implied consent of such Master and the approval of the Customs-collector, be done by a ship's agent.

CHAPTER II.

APPOINTMENT AND POWERS OF OFFICERS, ETC.

6. The Local Government of every place in which duties of Sea-customs are leviable may appoint such persons as it thinks fit to be officers of Customs, and to exercise the powers conferred, and to perform the duties imposed, by this Act on such officers.

Appointment of Customs-officers. Every person so appointed may be suspended or dismissed by the Local Government which appointed him.

Delegation of powers under section 6. 7. The Local Government may delegate to any officer of Customs any of the powers vested in it by the first clause of section 6.

Suspension and dismissal of subordinate officers. Every person appointed in exercise of such delegated power may be suspended or dismissed by the officer who appointed him.

Performance of duties of Customs-collector, where no Custom-house. 8. At any place for which there is no Custom-house, the Collector (a) of the District and the officers subordinate to him shall, unless the Local Government otherwise directs, perform all duties imposed by this Act on a Customs-collector and other officers of Customs.

Power to make rules. 9. The Chief Customs-authority may from time to time, [1] * * * make rules consistent with this Act—

- (a) prescribing and limiting the powers and duties of officers of Customs ;
- (b) regulating the delegation of their duties by such officers : and
- (c) generally to carry out the provisions of this Act.

Customs-officers exempted from service on jury or inquest or as assessors. 10. No Chief Customs-authority or Chief Customs-officer, and no other officer of Customs whom such Chief authority or Chief officer deems it necessary to exempt on grounds of public duty, shall be compelled to serve on any jury or inquest, or as an assessor.

CHAPTER III.

APPOINTMENT OF PORTS, WHARVES, CUSTOM-HOUSES, WAREHOUSES AND BOARDING AND LANDING-STATIONS.

Power to appoint Ports, Wharves and Custom-houses. 11. The Local Government [2] or, if so authorized by the Local Government, the Chief Customs-authority [2] may from time to time, by notification in the official Gazette,—

- (a) declare the places within the territories administered by it which alone shall be Ports for the shipment and landing of goods ;

Leg. Changes :—[1] The words "with the sanction of the Local Government," were omitted by Act IV of 1914. [2] Inserted by Act IV of 1914.

Case-law :—(a) His duty, 7 M. 42 ; see 4 C.L.J. 268 = 10 C.W.N. 107.

- (b) declare the limits of such Ports ;
- (c) appoint proper places therein to be Wharves for the landing and shipping of goods, or of particular classes of goods ;
- (d) declare the limits of any such Wharf ;
- (e) alter the name of any such Port or Wharf ; and
- (f) declare what shall, for the purposes of this Act, be deemed to be a Custom-house, and the limits thereof.

12. The Local Government [1] or, if so authorized by the Local Government, the Chief Customs-authority [1] may also from time to time in like manner declare places to be Ports for the carrying on of coasting-trade with Customs-ports, or with any specified Customs-port, and for no other purpose.

Power to declare places to be Ports for coasting-trade.

13. The Governor General in Council may from time to time direct, by notification in the Gazette of India, that all goods or any specified class of goods imported from or exported to any Foreign Port to or from a Customs-port shall, with such limitations and on such conditions (if any) as he thinks fit, be treated for any of the purposes of this Act as goods imported from or exported to a Customs-port, as the case may be.

Power to declare that Foreign Ports shall be regarded as Customs-ports for certain purposes.

14. The Local Government [1] or, if so authorized by the Local Government, the Chief Customs-authority [1] may from time to time declare, by notification in the official Gazette, that any Customs-port shall be a Warehousing port for the purposes of this Act.

Power to declare Warehousing Ports.

15. At any Warehousing port, the [2] Chief Customs-officer [2] may, from time to time, appoint public warehouses wherein dutiable goods may be deposited without payment of duty on the first importation thereof, and may cancel such appointment.

Power to appoint public warehouses.

16. At any Warehousing Port the Chief Customs-officer may from time to time license private warehouses wherein dutiable goods may be deposited as aforesaid.

Power to license private warehouses.

Every application for a license for a private warehouse shall be in writing, and shall be drawn up in such form as is from time to time prescribed by the [2] Chief Customs-officer [2], and shall be signed by the applicant.

Form of application for license.

Every license granted under this section may be cancelled on conviction of the licensee of any offence under this Act relating to warehouses, unless it is otherwise provided in the license, or on the expiration of one month's notice in writing given to the licensee by the Chief Customs-officer.

Revocation of license.

Leg. Changes:—[1] Inserted by Act IV of 1914. [2] The words "Chief Customs-officer" were substituted for "Chief Customs-authority" by Act IV of 1914.

17. The ^[1] Chief Customs-officer ^[1] may from time to time appoint, in or near any Customs-port, stations or limits at or within which vessels arriving at, or departing from, such Port shall bring-to for the boarding or landing of officers of Customs, and may, unless separate provision therefor has been made under the Indian Ports Act, 1875, direct at what particular place in any such Port vessels, not brought into Port by pilots, shall anchor or moor.

CHAPTER IV.

PROHIBITIONS AND RESTRICTIONS OF IMPORTATION
AND EXPORTATION.

18 No goods specified in the following clauses shall be brought, whether by land or sea, into British India :—

- (a) ^[2] * * * *
- (b) counterfeit coin : or coin which purports to be Queen's coin of India, or to be coin made under the Native Coinage Act, 1876, but which is not of the established standard in weight IX of 1876. or fineness :
- (c) any obscene book, pamphlet, paper, drawing, painting, representation, figure or article :
- ^[3] (d) goods having applied thereto a counterfeit trade-mark (a) within the meaning of the Indian Penal Code, or a false trade XLV of 1860. description within the meaning of the Indian Merchandise Marks Act, 1889 : IV of 1889.
- ^[3] (e) goods made or produced beyond the limits of the United Kingdom and British India, and having applied thereto any name or trade-mark being, or purporting to be, ^[4] * * * * the name or trade-mark of any person who is a manufacturer, dealer or trader in the United Kingdom or in British India unless—
- (i) the name or trade-mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of the United Kingdom and British India, and
- ^[5] (ii) the country in which that place is situated is in that indication indicated in letters as large and conspicuous as any letter in the name or trade-mark, and in the same language and character as the name or trade-mark :
- ^[6] (f) piece-goods, such as are ordinarily sold by length or by the piece, which—
- (i) have not conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece, and

Leg. Changes:—[1] The words "Chief Customs-officer" were substituted for "Chief Customs-authority" by Act IV of 1914. [2] The para. re "printed books" repealed by Act III of 1914. [3] Substituted and added by Act IV of 1889. [4] Repealed by Act XVI of 1904. [5] Substituted by Act IX of 1891. [6] Added by Act IV of 1889.

Case-law :—(a) Collector's power to detain such goods, 34 C. 511 ; see 1 Weir 557.

- (ii) have been manufactured beyond the limits of India, or,
- (iii) having been manufactured within those limits have been manufactured beyond the limits of British India in premises which, if they were in British India, would be a factory as defined in the Indian Factories Act, 1881.

XV of 1881.

[1] (g) matches made with white phosphorus.

19. The Governor General in Council may from time to time, by notification in the Gazette of India, prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of British India [2] or any specified part thereof, either generally or from or to any specified country, region, port or place beyond the limits of British India [2].

Power to prohibit or restrict importation or exportation of goods (a).

19-A. (1) Before detaining any such goods as are or may be specified in or under section 18 or section 19, as the case may be, or taking any further proceedings with a view to the confiscation thereof under this Act, the Chief Customs-officer or other officer appointed by the [3] Chief Customs-authority [3] in this behalf may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with, and may satisfy (b) himself in accordance with those regulations that the goods are such as are prohibited to be imported.

Detention and confiscation of goods whose importation is prohibited.

(2) The Governor General in Council may make regulations (c), either general or special, respecting the detention and confiscation of goods the importation of which is prohibited, and the conditions, if any, to be fulfilled before such detention and confiscation, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section and the mode of verification of such evidence.

(3) Where there is on any goods a name which is identical with, or a colourable imitation of, the name of a place in the United Kingdom or British India, that name, unless accompanied in equally large and conspicuous letters, and in the same language and character, by the name of the country in which such place is situate, shall be treated for the purposes of sections 18 and 19 as if it were the name of a place in the United Kingdom or British India.

(4) Such regulations may apply to all goods the importation of which is prohibited by section 18 or under section 19, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.

(5) The regulations may provide for the informant reimbursing any public officer and the Secretary of State for India in Council all expenses

Leg. Changes:—[1] Added by Act V of 1913. [2] Substituted by Act XII of 1914, for "or any specified part of British India." [3] The words "Chief Customs-authority" were substituted for "Local Government" by Act IV of 1914.

Case-law:—(a) See 33 B. 380—11 Bom. L.R. 221—1 Ind. Cas. 343. (b) Enquiry under the section limited in its character, 1 C.L.J. 268—10 C.W.N. 107. (c) Absence of regulations, immaterial, 34 C. 511.

and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

(6) All regulations under this section shall be published in the Gazette of India and in the Calcutta, Fort St. George, Bombay and Burma Gazettes.

CHAPTER V.

LEVY OF, AND EXEMPTION FROM, CUSTOMS-DUTIES.

20. Except as hereinafter provided, Customs-duties shall be levied
Goods dutiable. at such rates as may be prescribed by or under any law for the time being in force, on—

- (a) goods imported or exported by sea into or from any Customs-port from or to any Foreign Port;
- (b) opium, salt or salted fish imported by sea from any Customs-port into any other Customs-port;
- (c) goods brought from any Foreign Port to any Customs-port, and, without payment of duty, there transhipped for, or thence carried to, and imported at, any other Customs-port; and
- (d) goods brought in bond from one Customs port to another:

Provido. Provided that no such duties shall be levied on goods belonging to the Government.

21. Except as otherwise expressly provided by any law for the time being in force, goods whereof any article liable to duty under this Act forms a part or ingredient shall be chargeable with the full duty which would be payable on such goods if they were entirely composed of such article, or, if composed of more than one article liable to duty, then with the full duty which would be payable on such goods if they were entirely composed of the article charged with the highest rate of duty.

Goods partially composed of dutiable articles.

22. The Governor General in Council may from time to time, by notification in the Gazette of India, fix, for the purpose of levying duties, tariff-values of any goods exported or imported by sea on which Customs-duties are by law imposed, [1] and alter any such values fixed by any Tariff Act for the time being in force.

Power to fix tariff-values.

23. The Governor General in Council may from time to time, by notification in the Gazette of India, exempt any goods imported into, or exported from, British India, or into or from any specified Port therein, from the whole or any part of the Customs-duties leviable on such goods.

General power to exempt from Customs-duties.

The Local Government may, [2] with the previous sanction of the Governor General in Council, [2] by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature, to be stated in such order, any goods on which Customs-duties are leviable.

Power to authorise, in special cases, exemption from duty.

Leg. Changes:—[1] This section, so far as it relates to the Indian Tariff Act, has been repealed by Act IV of 1916. [2] Inserted by Act VIII of 1894.

24. The Customs-collector may, subject to any general rules relating to the landing and shipping of passengers' baggage in actual use, baggage and the passing of the same through the Custom-house, which may be made under section 75, pass free of duty any baggage in actual use, and for this purpose may determine, subject to any such rules, whether any goods shall be treated as baggage in actual use, or as goods subject to duty.

25. If goods produced or manufactured in British India be imported into any Customs-port from any Foreign Port, such goods shall be liable to all the duties, conditions and restrictions (if any) to which goods of the like kind and value not so produced or manufactured are liable on the first importation thereof:

Re-imported articles of country-produce.

Provided that, if such importation takes place within three years after the exportation of such goods, and it is proved to the satisfaction of the Customs-collector that the property in such goods has continued in the person by whom, or on whose account, they were exported, the goods may be admitted without payment of duty.

Proviso.

26. Any goods produced or manufactured in British India which have been exported therefrom, and on the exportation of which any drawback of excise has been received, shall, on being imported into any Customs-port, be subjected, unless the [1] Chief Customs-officer [1] in any particular case otherwise directs by special order, to payment of excise-duty, at the rate to which goods of the like kind and quality are liable at such port.

Excise duty on importation of certain country goods.

27. All goods derelict, jetsam, flotsam and wreck, brought or coming into any place in British India, shall be subject to the same duties, if any, to which goods of the like kind are for the time being subject on importation at any Customs-port, and shall in other respects be dealt with as if they were imported from a Foreign Port, unless it be shown to the satisfaction of the Customs-collector that such goods are the produce or manufacture of any place from which they are entitled to be admitted duty-free.

Goods derelict and wreck.

28. Provisions and stores produced or manufactured in British India, required for use on board of any vessel proceeding to any Foreign Port, may be shipped free of duty, whether of customs or excise, in such quantities as the Customs-collector determines with reference to the tonnage of the vessel, the numbers of the crew and passengers, and the length of the voyage on which the vessel is about to depart:

Country provisions and stores may be shipped free of duty.

Provided that no rum shall be so shipped on any vessel going on a voyage of less than thirty days' probable duration.

Leg. Changes:—[1] The words "Chief Customs-officer" were substituted for "Chief Customs-authority" by Act IV of 1914.

29. On the importation into, or exportation from, any Customs-port of any goods, whether liable to duty or not, the owner of such goods shall, in his bill-of-entry or shipping-bill, as the case may be, state the real value, quantity and description of such goods to the best of his knowledge and belief, and shall subscribe a declaration of the truth of such statement at the foot of such bill.

Owner to declare real value, etc., of goods in bill-of-entry or shipping-bill.

In case of doubt, the Customs-collector may require any such owner or any other person in possession of any invoice, broker's note, policy of insurance or other document, whereby the real value, quantity or description of any such goods can be ascertained, to produce the same, and to furnish any information relating to such value, quantity or description which it is in his power to furnish. And thereupon such person shall produce such document and furnish such information :

Power to require production of invoice, etc.

Provided that, if the owner makes and subscribes a declaration before the Customs-collector, to the effect that he is unable, from want of full information, to state the real value or contents of any case, package or parcel of goods, then the Customs-collector shall permit him, previous to the entry thereof, (1) to open such case, package or parcel, and examine the contents in presence of an officer of Customs, or (2) to deposit such case, package or parcel in a public warehouse appointed under section 15 without warehousing the same, pending the production of such information.

"Real value" defined.

30. For the purposes of this Act the real value shall be deemed to be—

- (a) the wholesale cash price, less trade discount, for which goods of the like kind and quality are sold, or are capable of being sold, at the time and place of importation or exportation, as the case may be, without any abatement or deduction whatever, except (in the case of goods imported) of the amount of the duties payable on the importation thereof : or
- (b) where such price is not ascertainable, the cost at which goods of the like kind and quality could be delivered at such place, without any abatement or deduction except as aforesaid.

31. Goods chargeable with duty upon the value thereof, but for which a specific value is not fixed by law for the purpose of levying duties thereon, shall, without unnecessary delay, be examined by an officer of Customs. If it appears that the real value of such goods is correctly stated in the bill-of-entry or shipping-bill, the goods shall be assessed in accordance therewith.

Examination of *ad valorem* goods

32. If it appears that such goods are properly chargeable with a higher rate or amount of duty than that to which they would be subject according to the value thereof as stated in the bill-of-entry or shipping-bill, such officer may detain such goods.

Procedure where such goods are under-valued by owner.

In every such case the detaining officer shall forthwith give notice in writing to the owner of the goods of their detention, and of the value

thereof as estimated by him; and the Customs-collector shall, within two clear working days after such detention, or within such reasonable period as may with the consent of the parties be arranged, determine either to deliver such goods on payment of duty charged according to the entry of such owner, or to retain the same for the use of Government.

If the goods be retained for the use of Government, the Customs-collector shall cause the full amount stated in the bill as their real value to be paid to the owner in full satisfaction for such goods in the same manner as if they had been transferred by ordinary sale, and shall, after due notice in the local official Gazette or some local newspaper, and without unnecessary delay, cause them to be put up to public auction in wholesale lots for cash on delivery.

If the Customs-collector deems the highest offer made at such sale to be inadequate, he may either adjourn the sale to some other day, to be notified as aforesaid, or buy in the goods, and without unnecessary delay dispose of them for the benefit of Government.

If the proceeds arising from such sale exceed the sum paid to the owner, together with (in the case of goods imported) the duty to which the goods are liable and all charges incurred by Government in connection with them, a portion not exceeding one-half of the overplus shall, at the discretion of the Chief Officer of Customs, be payable to the officer who detected the under-valuation of the goods.

Nothing in this section shall prevent the Chief Officer of Customs, when he has reason to believe that any such under-valuation was solely the result of accident or error, from permitting the owner of the goods, on his application for that purpose, to amend such entry, on payment of such increased rate of duties on the excess of the amended over the original valuation, or on such other terms as the Chief Officer of Customs may determine.

33. If, on the first examination of any such goods under section 31, the owner thereof states in writing that such goods are, in consequence of damage sustained before delivery of the bill-of-entry, of value less than that stated in such bill, the Customs-collector, on being satisfied of the fact, may allow abatement of duty accordingly.

Abatement allowed on damaged goods. The reduced duty to be levied on such goods may be ascertained by either of the following methods, at the option of the owner :—

- (a) the real value of such goods may be fixed on appraisement by an officer of Customs and the duty may be assessed on the value so fixed; or
- (b) the goods may, after due notice in the local official Gazette or some local newspaper, be sold by public auction at such time (within thirty days from the date of delivery of the bill-of-entry), and at such place, as the Customs-collector appoints; and the duty may be assessed on the gross amount realized by such sale, without any abatement or deduction, except (in the case of goods imported) of so much as represents the duties payable on the importation thereof.

34. When any goods, the value of which has been fixed by law for the purpose of levying duties thereon, have, before delivery of the bill-of-entry, deteriorated to the extent of more than one-tenth of their value, the duty on such goods shall, if the owner thereof so desires, be assessed *ad valorem*.

The real value of such goods shall be ascertained as provided in section 33, and the duty shall be assessed thereon.

No abatement when duty is levied on quantity.

35. No abatement of duty on account of damage shall be allowed on wine, spirit or beer, or on any other articles on which duties are levied on quantity and not on value.

36. Except as provided in section 94, no amendment of a bill-of-entry or shipping-bill relating to goods assessed for duty on the declared value, quantity or description thereof shall be allowed after such goods have been removed from the Custom-house.

Restriction on amendment of bill-of-entry or shipping-bill.

37. The rate of duty and the tariff-valuation (if any) applicable to any goods imported shall be the rate and valuation in force on the date on which the bill-of-entry thereof is delivered to the Customs-collector under section 86:

[1] Provided that, if such goods are warehoused under this Act, the rate and valuation (if any) applicable thereto shall be the rate and valuation in force on the date [2] of the actual removal of such goods from the warehouse in the case of goods delivered out of a warehouse for home consumption, and in the case of goods delivered out of a warehouse for removal under bond to be re-warehoused where the duty is paid on such goods without their being re-warehoused, the rate and valuation (if any) in force on the date on which duty is paid.[2]

Explanation.—A bill-of-entry shall, for the purposes of this section, be deemed to be delivered when it is first presented to the proper officer of Customs.

Alteration of export-duty or tariff-valuation.

38. The rate of duty and tariff-valuation (if any) applicable to any goods exported shall be the rate and valuation in force when a shipping-bill of such goods is delivered under section 137:

[3] Provided that where the shipment of any goods is permitted without a shipping-bill, or in anticipation of the delivery of a shipping-bill, the rate of duty and tariff-valuation, if any, applicable shall be the rate and valuation in force at the time when shipment of the goods commences.[3]

39. When customs-duties or charges have been short-levied through inadvertence, error, collusion or misconstruction on the part of the officers of Customs, or through misstatement as to real value, quantity or description on the part of the owner,

Payment of duties short-levied or erroneously refunded.

Leg. Changes:—[1] Substituted by Act VIII of 1889. [2] Substituted by Act IX of 1915 for "on which application is made to clear such goods from the warehouse for home consumption" [3] Added by Act XII of 1914.

or when any such duty or charge, after having been levied, has been, owing to any such cause, erroneously refunded,

the person chargeable with the duty or charge so short-levied, or to whom such refund has erroneously been made, shall pay the deficiency or repay the amount paid to him in excess, on demand being made within three months from the date of the first assessment or making of the refund ;

and the Customs-collector may refuse to pass any goods belonging to such person until the said deficiency or excess be paid or repaid.

No refund of charges erroneously levied or paid, unless claimed within three months.

40. No customs-duties or charges which have been paid, and of which repayment, wholly or in part, is claimed in consequence of the same having been paid through inadvertence, error or misconstruction, shall be returned, unless such claim is made within three months from the date of such payment.

41. The Customs-collector may, if he thinks fit, instead of requiring payment of customs-duties and charges due from any mercantile firm or public body, at the time such duties and charges are payable under this Act, keep with such firm or body an account-current of such duties and charges. Such account shall be settled at intervals not exceeding one month, and such firm or body shall make a deposit or furnish security sufficient in the opinion of the Customs-collector to cover the amount which may at any time be due from them in respect of such duties and charges.

Power to give credit for, and keep account-current of, duties and charges.

CHAPTER VI.

DRAWBACK.

42. When any goods, capable of being easily identified, which have been imported by sea into any Customs-port from any Foreign Port, and upon which duties of customs have been paid on importation, are re-exported by sea from such Customs-port to any Foreign Port, or as provisions or stores for use on board a ship proceeding to a Foreign Port, seven-eighths of such duties shall, except as otherwise hereinafter provided, be repaid as drawback :

Provided that, in every such case, the goods be identified to the satisfaction of the Customs-collector at such Customs-port, and that the re-export be made within two years from the date of importation, as shown by the records of the Custom-house, or within such extended term as the Chief Customs-authority [1] or the Chief Customs-officer [1] on sufficient cause being shown, in any case determines :

[2] Provided further that the Chief Customs-officer shall not extend the term to a period exceeding three years.

Drawback on goods exported to Customs-port and thence to Foreign Port.

43. When any goods, having been charged with import-duty at one Customs-port and thence exported to another, are re-exported by sea as aforesaid, drawback shall be allowed on such goods as if they had been so re-exported from the former Port :

Provided that, in every such case, the goods be identified to the satisfaction of the officer in charge of the Custom-house at the Port of final exportation, and that such final exportation be made within three years from the date on which they were first imported into British India.

44. A drawback of the whole of the Customs-duties shall be allowed on wine and spirit intended for the consumption of any officer of Her Majesty's Navy, on board of any of Her Majesty's ships in actual service, unless such wine and spirit have been warehoused without payment of duty on the first entry thereof.

The quantity of wine and spirit on which drawback may be so allowed in any one year for the use of such officers shall not exceed the quantities hereinafter allowed for each such officer respectively ; that is to say—

	Gallons.
For every Admiral	... 1,260
Vice-Admiral	... 1,050
Rear-Admiral	... 840
Captain of 1st and 2nd rate	... 630
Captain of 3rd, 4th and 5th rate	... 420
Captain of an inferior rate	... 210
Lieutenant or other Commanding Officer, Marine-officer, Master, Purser or Surgeon	... 105

45. Every person clearing and claiming drawback for wine or spirit, as provided in section 44, shall state in the shipping-bill the name of the officer for whose use such wine or spirit is intended, and of the ship in which he serves, as well as the place and date of the last supply for which drawback was allowed.

All such wine and spirit shall be delivered into the charge of the proper officers of Customs at the Port of shipment, to be shipped under their care ; and when the officer commanding the ship has certified the receipt of such wine and spirit into his charge, and any such officer of Customs has certified the shipment, the drawback shall be paid to the person entitled to receive the same.

46. The Customs-collector may permit the transfer of any such wine or spirit from one Naval officer to another Naval officer on board of the same, or of any other such vessel, as part of his authorised quantity ;

or may permit the transshipment of any such wine or spirit from one vessel to another for the use of the same Naval officer ;

or the re-landing and warehousing of any such wine or spirit for future re-shipment.

The Customs-collector may also receive back the duties for any such wine or spirit, and allow the same to be cleared for home-consumption.

47. Provisions and stores for the use of Her Majesty's Navy or of any officer thereof which are subject to duty may, in like manner, be transferred, transhipped or re-landed and warehoused, free of duty ;

and where duties have been paid on any such provisions or stores required for shipment, drawback of such duties, whether of customs or excise, shall be allowed on receipt of an application in writing from the officer commanding the ship for which they are intended, or from some other officer duly authorized to make such application.

48. The provisions of sections 44, 45, 46 and 47 as to officers of Her Majesty's Navy apply also to officers of Her Majesty's Indian Marine and Marine-survey on board of any of the ships of such Marine or Survey proceeding to any Port out of India, and the rules prescribed by section 47 as to provisions and stores for the use of Her Majesty's Navy apply also to provisions and stores for the use of such Marine or Survey.

49. The Governor General in Council may from time to time, by notification in the Gazette of India,—

- (a) declare what goods shall, for the purpose of this Chapter, be deemed to be capable of being easily identified; and
- (b) prohibit the payment of drawback upon the re-exportation of goods [1] or any specified goods or class of goods [1] to any specified Foreign Port.* * [2]

50. Notwithstanding anything hereinbefore contained, no drawback shall be allowed—

- (a) upon goods not included in the export-manifest, or
- (b) where the goods to be exported are of less value than the amount of drawback claimed, or
- (c) where the claim is for drawback amounting, in respect of any single shipment, to less than five rupees, and the Customs-collector thinks fit to reject it, or
- (d) on salt, salted fish, or opium.

51. No drawback shall be allowed unless the claim to receive such drawback be made and established at the time of re-export.

No such payment of drawback shall be made until the vessel carrying the goods has put out to sea, or unless payment be demanded within six months from the date of entry for shipment.

52. Every person, or his duly authorized agent, claiming drawback on any goods duly exported, shall make and subscribe a declaration that such goods have been actually exported, and have not been relanded and are not intended to be relanded at any Customs-port; and that such person was at the time of entry outwards and shipment, and continues to be, entitled to drawback thereon.

Leg. Changes:—[1] Added by Act XII of 1914. [2] The words "in India" repealed by Act XII of 1914.

CHAPTER VII.

ARRIVAL AND DEPARTURE OF VESSELS.

Arrival and Entry of Vessels inwards.

Power to fix places beyond which inward bound vessels are not to proceed until manifest delivered.

53. The [1] Chief Customs-authority [1] may, by notification in the local official Gazette, fix a place in any river or Port, beyond which no vessel arriving shall pass until a manifest has been delivered to the Pilot, officer of Customs or other person duly authorized to receive the same.

If, in any river or Port wherein a place has been fixed by the [1] Chief Customs-authority [1] under this section, the

Delivery of manifest when vessel anchors below place so fixed.

Master of any vessel arriving remains outside or below the place so fixed, such Master shall, nevertheless, within twenty-four hours after the vessel anchors, deliver a manifest to the Pilot, officer of

Customs or other person authorized to receive the same.

54. If any vessel arrives at any Customs-port in which a place has not been so fixed, the Master of such vessel shall,

Delivery of manifest where no place has been so fixed.

within twenty-four hours after such vessel has anchored within the limits of the Port, deliver a manifest to the Pilot, officer of Customs or other person authorized to receive the same.

55. Every manifest shall be signed by the Master, and shall specify

Signature and contents of manifest.

all goods imported in such vessel, showing separately all goods (if any) intended to be landed, transhipped or taken on to another Port, and all ship's stores intended for consumption in Port or on the homeward voyage, and shall contain such further particulars, and be made out in such form, as the [2] Chief Customs-officer [2] may from time to time direct.

The Customs-collector shall permit the Master to amend any obvious error in the manifest, or to supply any omission

Amendment of errors in manifest.

which in the opinion of such Collector results from accident or inadvertence, by furnishing an amended or supplementary manifest,

and may, if he thinks fit, levy thereon such fee as the [2] Chief Customs-officer [2] from time to time directs.

Except as herein provided, no import-manifest shall be amended.

56. The person receiving a manifest under section 53 or 54 shall

Duty of person receiving manifest.

countersign the same and enter thereon such particulars as the [2] Chief Customs-officer [2] from time to time directs in this behalf.

Leg. Changes:—[1] The words "Chief Customs-authority" were substituted for "Local Government" by Act IV of 1914. [2] The words "Chief Customs-officer" were substituted for "Chief Customs-authority" by Act IV of 1914.

57. No vessel arriving in any Customs-port shall be allowed to break bulk until a manifest has been delivered as hereinbefore provided; nor until a copy of such manifest, together with an application for entry of such vessel inwards, has been presented by the Master to the Customs-collector, and an order has been given thereon for such entry.

Bulk not to be broken until manifest, etc., delivered, and vessel entered inwards.

58. The Master shall, if required so to do by the Customs-collector at the time of presenting such application, deliver to the Customs-collector the bill-of-lading or a copy thereof for every part of the cargo laden on board, and any port-clearance, cocket or other paper granted in respect of such vessel at the place from which she is stated to have come, and shall answer all such questions relating to the vessel, cargo, crew and voyage as are put to him by such officer.

Master, if required, to deliver bill-of-lading, etc., to Customs-collector,

The Customs-collector may, if any requisition or question made or put by him under this section is not complied with or answered, refuse to grant such application.

59. Notwithstanding anything contained in section 57, the Customs-collector may grant, prior to receipt of the manifest, and to the entry inwards of the vessel, a special pass permitting bulk to be broken.

Special pass for breaking bulk.

The granting of such pass shall be subject to such rules as may from time to time be made by the Chief Customs-authority.

60. Notwithstanding anything contained in section 53, 54, 57 or 58, the Customs-collector may accept from the ship's agent, in lieu of the Master, delivery of the manifest or of any other document required by those sections to be delivered by the Master.

Manifest, etc., may be delivered by ship's agent.

Entry outwards, Port-clearance and Departure of Vessels.

61. No vessel shall take on board any part of her export cargo, until a written application for entry of such vessel outwards, subscribed by the Master of such vessel, has been made to the Customs-collector, or before an order has been given thereon by such officer for such entry.

Order for entry outwards obtained before export cargo is shipped.

Every application made under this section shall specify the name, tonnage and national character of the vessel, the name of the Master, and the name of every place for which cargo is to be shipped.

62. No vessel, whether laden or in ballast, shall depart from any Customs-port until a port-clearance has been granted by the Customs-collector or other officer duly authorised to grant the same.

No vessel to depart without port-clearance.

No Pilot to take charge of vessel proceeding to sea without production of port-clearance.

And no Pilot shall take charge of any vessel proceeding to sea, unless the Master of such vessel produces a port-clearance.

Application for port-clearance. **63.** Every application for port-clearance shall be made by the Master at least twenty-four hours before the intended departure of the vessel.

Master on applying for port-clearance to deliver documents and answer questions. The Master shall, at the time of applying for port-clearance,—

- (a) deliver to the Customs-collector a manifest in duplicate in such form as may from time to time be prescribed by the [1]Chief Customs-officer[1] signed by such Master, specifying all goods to be exported in the vessel, and showing separately all goods and stores entered in the import manifest, and not landed or consumed on board or transhipped :
- (b) deliver to the Customs-collector such shipping-bills or other documents as such Customs-collector, acting under the general instructions of such [1]Chief Customs-officer[1], requires ; and
- (c) answer to the proper officer of Customs such questions touching the departure and destination of the vessel as are demanded of him.

The provisions of section 55 relating to the amendment of import-manifests shall, *mutatis mutandis*, apply also to export-manifests delivered under this section.

Power to refuse port-clearance. **64.** The Customs-collector may refuse port-clearance to any vessel until—

- (a) the provisions of section 63 are complied with ;
- (b) all port-dues and other charges and penalties due by such vessel, or by the owner or Master thereof, and all duties payable in respect of any goods shipped therein, have been duly paid, or their payment secured by such guarantee, or by deposit at such rate, as such Customs-collector directs ;
- (c) the ship's agent (if any) delivers to the Customs-collector a declaration in writing to the effect that he will be liable for any penalty imposed under section 167, No. 17, and furnishes security for the discharge of the same ;
- (d) the ship's agent (if any) delivers to the Customs-collector a declaration in writing to the effect that such agent is answerable for the discharge of all claims for damage or short delivery which may be established by the owner of any goods comprised in the import-cargo in respect of such goods.

A ship's agent delivering a declaration under clause (c) of this section shall be liable to all penalties which might be imposed on the Master under section 167, No. 17, and a ship's agent delivering a declaration under clause (d) of this section shall be bound to discharge all claims referred to in such declaration.

Leg. Changes :—[1] The words "Chief Customs-officer" were substituted for "Chief Customs-authority" by Act IV of 1914.

65. When the Customs-collector is satisfied that the provisions of section 63, and if necessary of clauses (b) and (c) and (d) of section 64, have been complied with, he shall grant a port-clearance to the Master, and shall return at the same time to such Master one copy of the manifest duly countersigned by the proper officer of Customs.

66. Notwithstanding anything contained in sections 64 and 65, the Customs-collector may (subject to such rules as the Chief Customs-authority may from time to time prescribe) grant a port-clearance to the Master when the ship's agent furnishes such security as the Customs-collector deems sufficient for duly delivering, within five days from the date of such grant, the manifest and other documents specified in section 63.

CHAPTER VIII.

GENERAL PROVISIONS AFFECTING VESSELS IN PORT.

67. The Customs-collector at any Customs-port may at any time depute at his discretion one or more officers of Customs to board any vessel in or arriving at such Port.

Every officer of Customs so sent shall remain on board of such vessel by day and by night unless or until the Customs-collector otherwise orders.

68. Whenever an officer of Customs is so deputed on board of any vessel, the Master of such vessel shall be bound to receive on board such officer, and one servant of such officer, and to provide such officer and servant with suitable shelter and accommodation, and likewise with a due allowance of fresh water, and with the means of cooking on board.

Every officer of Customs so deputed shall have free access to every part of the vessel, and may fasten down any hatchway or entrance to the hold and mark any goods before landing, and look up, seal, mark or otherwise secure any goods on board of such vessel.

If any box, place or closed receptacle in any such vessel be locked, and the key be withheld, such officer shall report the same to the Customs-collector, who may thereupon issue to the officer on board, or to any other officer under his authority, a written order to search.

On production of such order, the officer bearing the same may require that any such box, place or closed receptacle be opened in his presence; and, if it be not opened upon his requisition, he may break open the same.

70. Unless with the written permission of the Customs-collector or in accordance with a general permission granted under section 74, no goods other than passengers' baggage, or ballast urgently required to be shipped for the vessel's safety, shall be shipped or water-borne to be shipped or discharged from any vessel in any Customs-port, except in the presence of an officer of Customs.

Goods not to be shipped, discharged or water-borne except in presence of officer.

71. When an officer of Customs is deputed under section 67 to remain on board a vessel the tonnage of which does not exceed six hundred tons, a period of thirty working days, reckoned from the date on which he boards such vessel, or such additional period as the Customs-collector directs, shall be allowed for the discharge of import-cargo and the shipment of export-cargo on board of such vessel.

Period allowed for discharge and shipment of cargo.

One additional day shall, in like manner, be allowed for every fifty tons in excess of six hundred.

No charge shall be made for the services of a single officer of Customs for such allowed number of working days, or for the services of several such officers (if available) for respective periods not exceeding in the aggregate such allowed number of working days.

If the period occupied in the discharge and shipment of cargo be in excess of thirty working days, together with the additional period (if any) allowed under this section, the vessel shall be charged with the expense of the officer of Customs at a rate not exceeding five rupees per diem (Sundays and holidays excepted) for such excess period.

Consequence of exceeding same.

In calculating any period allowed, or any charge made, under this section, the period (if any) during which a vessel, after the completion of the discharge of import-cargo, and before commencing the shipment of export-cargo, is laid up by the withdrawal of the officer of Customs, upon application from the Master, shall be deducted.

Allowance for period during which vessel is laid up.

72. Except with the written permission of the Customs-collector, no goods, other than passengers' baggage, shall in any Customs-port be discharged from any vessel, or be shipped or water borne to be shipped,—

Goods not to be landed, etc., on Sundays or holidays, without permission, nor except within fixed hours.

- (a) on any Sunday or on any holiday or day on which the discharge or shipping of cargo as the case may be, is prohibited by the Chief Customs-authority;
- (b) on any day, except between such hours as such authority from time to time appoints by notification in the official Gazette.

73. No goods shall in any Customs-port be landed at any place other than a wharf or other place duly appointed for that purpose, and

Goods not to be shipped, etc., except at wharves.

unless with the written permission of the Customs-collector, or when a general permission has been granted under section 74, no goods shall in any Customs-port be shipped or water-borne to be shipped from any place other than a wharf or other place duly appointed for that purpose.

74. Notwithstanding anything contained in section 70 or 73, the Chief Customs-authority may, by notification in the local official Gazette, give general permission for goods to be shipped or water-borne to be shipped in any Customs-port from all or any places not duly appointed as wharves, and without the presence or authority of an officer of Customs.

75. The Chief Customs-authority may from time to time make rules for the landing and shipping of passengers' baggage and the passing of the same through the Custom-house: and for the landing, shipping and clearing of parcels forwarded by Her Majesty's or other mails, or by other regular packets and passenger-vessels.

When any baggage or parcels is or are made over to an officer of Customs for the purpose of being landed, a fee of such amount as the [1] Chief Customs-authority [1] from time to time directs shall be chargeable thereon, as compensation for the expense and trouble incurred in landing and depositing the same in the Custom-house.

76. When any goods are water-borne for the purpose of being landed from any vessel and warehoused or cleared for home-consumption, or of being shipped for exportation on board of any vessel, there shall be sent, with each boat-load or other separate despatch a boat-note specifying the number of packages so sent and the marks and numbers or other description thereof.

Each boat-note for goods to be landed shall be signed by an officer of the vessel, and likewise by the officer of Customs on board, if any such officer be on board, and shall be delivered on arrival to any officer of Customs authorized to receive the same.

Each boat-note for goods to be shipped shall be signed by the proper officer of Customs, and, if an officer of Customs is on board of the vessel on which such goods are to be shipped, shall be delivered to such officer. If no such officer be on board, every such boat-note shall be delivered to the Master of the vessel, or to an officer of the vessel appointed by him to receive it.

The officer of Customs who receives any boat-note of goods landed, and the officer of the Customs, Master or other officer, as the case may be, who receives any boat-note of goods shipped, shall sign the same and note thereon such particulars as the [2] Chief Customs-officer [2] may from time to time direct.

The [1] Chief Customs-authority [1] may from time to time, by notification in the local official Gazette, suspend the operation of this section in any Customs-port or part thereof.

Leg. Changes :—[1] The words "Chief Customs-authority" were substituted for "Local Government" by Act IV of 1914. [2] The words "Chief Customs-officer" were substituted for "Chief Customs-authority" by Act IV of 1914.

Case-law :—(a) Master allowing boat-load to leave vessel without boat-note, 1 Weir 897.

Goods water-borne to be forthwith landed or shipped.

77. All goods water-borne for the purpose of being landed or shipped shall be landed or shipped without any unnecessary delay.

Such goods not to be transhipped without permission.

78. Except in cases of imminent danger, no goods discharged into or loaded in any boat for the purpose of being landed or shipped shall be transhipped into any other boat without the permission of an officer of Customs.

Power to prohibit plying of unlicensed cargo-boats.

79. The [1] Chief Customs-authority [1] may declare with regard to any Customs-port, by notification in the local official Gazette, that, after a date therein specified no boat not duly licensed and registered shall be allowed to ply (a) as a cargo-boat for the landing and shipping of merchandise within the limits of such Port.

Issue of licenses and registration of cargo-boats.

In any Port with regard to which such notification has been issued, the Chief-officer of Customs or other officer whom the [1] Chief Customs-authority [1] appoints in this behalf, may, subject to such rules and on payment of such fees as the [1] Chief Customs-authority [1] prescribes by notification in the local official Gazette, issue licenses for and register cargo-boats. Such officer may also, subject to rules so prescribed, cancel any license so issued.

Power to require goods to be weighed or measured on board before landing or after shipment.

80. The Customs-collector may, whenever he thinks fit, require that goods stowed in bulk, and brought by sea or intended for exportation, shall be weighed or measured on board ship before landing or after shipment, and may levy duty according to the result of such weighing or measurement.

CHAPTER IX.

OF DISCHARGE OF CARGO AND ENTRY INWARDS OF GOODS.

Discharge of cargo may commence on receipt of due permission.

81. When an order for entry inwards of any vessel which has arrived in any Customs-port or a special pass permitting such vessel to break bulk has been given, the discharge of the cargo of such vessel may be proceeded with.

Goods not to leave ship unless entered in manifest.

82. Except as otherwise provided in this Act, no goods shall be allowed to leave any such vessel, unless they are entered in the original manifest of such vessel, or in an amended or supplementary manifest received under section 55.

Procedure in respect of goods not landed within time allowed.

83. If the owner of any goods (except such as have been shown in the import-manifest as not to be landed) does not land such goods within such period as is specified in the bill-of-lading of such goods, or, if no period is so specified, within such number of working days, not exceeding fifteen, after the entry of the vessel importing

Leg. Changes :—[1] The words " Chief Customs-authority " were substituted for " Local Government " by Act IV of 1914.

Case-law :—(a) Not necessarily for hire, 12 Cr. L.J. 476 = 12 Ind. Cas. 84.

the same, as the [1] Chief Customs-authority [1] from time to time appoints by notification in the official Gazette, or

if the cargo of any vessel with the exception of only a small quantity of goods, has been discharged previously to the expiration of the period so specified or appointed, as the case may be—

the Master of such vessel or, on his application, the proper officer of Customs, may then carry such goods to the Custom-house, there to remain for entry.

The Customs-collector shall thereupon take charge of, and grant receipts for, such goods ;

and if notice in writing has been given by the Master that the goods are to remain subject to a lien for freight, primage, general average, or other charges of a stated amount, the Customs-collector shall hold such goods until he receives notice in writing that the said charges are paid.

84. At any time after the arrival of any vessel, the Customs-collector may, with the consent of the Master of such vessel, cause any small package or parcel of goods to be carried to the Custom-house, there to remain for entry. in charge of the officers of Customs, during the remainder of the working days allowed under this Act for the landing of such package or parcel.

If any package or parcel so carried to the Custom-house remains unclaimed on the expiration of the number of working days so allowed for its landing, or at the time of the clearance outwards of the vessel from which it was landed, the Master may give such notice as is provided in section 83, and the officer in charge of the Custom-house shall thereupon hold such package or parcel as provided in that section.

85. Notwithstanding anything contained in sections 83 and 84, the Customs-collector in any Customs-port to which the [1] Chief Customs-authority [1] by notification in the local official Gazette, declares this section to be applicable, may permit the Master of any vessel, immediately on receipt of an order under section 57 or a special pass under section 59, to discharge the cargo of such vessel or any portion thereof into the custody of the ship's agents if willing to receive the same, for the purpose of landing the same forthwith—

(a) at the Custom-house or any specified landing-place or wharf ;
or

(b) at any landing place or wharf belonging to any Port Commissioners, Port Trust or other public body or company.

Any ship's agent so receiving such cargo or portion shall be bound to discharge all claims for damage or short delivery which may be established in respect of the same by the owner thereof, and shall be entitled to recover from such owner his charges for service rendered, but not for commission or the like, where any agent for the landing of such cargo or

Leg. Changes :—[1] The words " Chief Customs-authority " were substituted for " Local Government " by Act IV of 1914.

portion has been previously appointed by the owner and such appointment is unrevoked.

The Customs-collector shall take charge of all goods discharged under clause (a) of this section, and otherwise proceed in relation thereto as provided in sections 83 and 88.

A public body or company at whose landing-place or wharf any goods are discharged under clause (b) of the section shall not permit the same to be removed without an order in writing from the Customs-collector.

86. The owner of any goods imported shall, on the landing thereof from the importing ship, make entry of such goods for home-consumption or warehousing by delivering to the Customs-collector a bill-of-entry thereof in duplicate, in such form and containing such particulars, in addition to the particulars specified in section 29, as may, from time to time, be prescribed by the [1] Chief Customs-officer. [1]

The particulars of such entry shall correspond with the particulars given of the same goods in the manifest of the ship.

87. On the delivery of such bill the duty (if any) leviable on such goods shall be assessed, and the owner of such goods may then proceed to clear the same for home-consumption, or warehouse them, subject to the provisions hereinafter contained.

88. If any goods are not entered and cleared for home-consumption, or warehoused within four months from the date of entry of the vessel, such goods may, after due notice to the owner, if his address can be ascertained, and in the local official Gazette, be sold by public auction, and the proceeds thereof shall be applied, first, to the payment of freight, primage and general average, if the goods are held by the Customs-collector subject to such charges under notice given under section 83, 84 or 85; next, to the payment of the duties which would be leviable on such goods if they were then cleared for home-consumption, and next to the payment of the other charges (if any) payable to the Customs-collector in respect of the same.

The surplus, if any, shall be paid to the owner of the goods, on his application for the same; provided that such application be made within one year from the sale of the goods, or that sufficient cause be shown for not making it within such period.

If any goods of which the Customs-collector has taken charge under section 83, 84 or 85 be of a perishable nature, the Customs-collector may at any time direct the sale thereof, and shall apply the proceeds in like manner:

Provided that, where any goods liable to be sold under this section are arms, ammunition or military stores, they may be sold or otherwise disposed of at such place (whether

Leg. Changes:—[1] The words "Chief Customs-officer" were substituted for "Chief Customs-authority" by Act IV of 1914.

within or without British India), and in such manner, as the Local Government may from time to time direct :

Provided also that nothing in this section shall authorize the removal for home-consumption of any dutiable goods without payment of duties of customs thereon.

CHAPTER X.

OF CLEARANCE OF GOODS FOR HOME-CONSUMPTION.

89. When the owner of any goods entered for home-consumption, and (if such goods be liable to duty) assessed under section 87, has paid the import-duty (if any) assessed on such goods and any charges payable under this Act in respect of the same, the Customs-officer may make an order clearing the same; and such order shall be sufficient authority for the removal of such goods by the owner.

CHAPTER XI.

WAREHOUSING.

Of the Admission of Goods into a Warehouse.

90. When any dutiable goods have been entered for warehousing and assessed under section 87, the owner of such goods may apply for leave to deposit the same in any warehouse appointed or licensed under this Act.

91. Every such application shall be in writing signed by the applicant, and shall be in such form as is from time to time prescribed by the Chief Customs-authority.

92. When any such application has been made in respect of any goods the owner of the goods to which it relates shall execute a bond, binding himself, in a penalty of twice the amount of duty assessed under section 87 on such goods,—

- (a) to observe all rules prescribed by this Act in respect of such goods;
- (b) to pay, on demand, all duties, rent and charges claimable on account of such goods under this Act, together with interest on the same from the date of demand, at such rate not exceeding six per cent. per annum as is for the time being fixed by the Chief Customs-authority; and
- (c) to discharge all penalties incurred for violation of the provisions of this Act in respect of such goods.

Every such bond shall be in the form marked A hereto annexed, or, when such form is inapplicable or insufficient, in such other form as is from time to time prescribed by the Chief Customs-authority,

and shall relate to the cargo or portion of the cargo of one vessel only.

93. When the provisions of sections 91 and 92 have been complied with in respect of any goods, such goods shall be forwarded in charge of an officer of Customs to the warehouse in which they are to be deposited.

Forwarding of goods to warehouse.

A pass shall be sent with the goods specifying the name of the importing vessel and of the bonder, the marks, numbers and contents of each package, and the warehouse or place in the warehouse wherein they are to be deposited.

94. On receipt of the goods, the pass shall be examined by the warehouse-keeper, and shall be returned to the Customs-collector.

Receipt of goods at warehouse.

No package, butt, cask or hogshead shall be admitted into any warehouse unless it bear the marks and numbers specified in, and otherwise correspond with, the pass for its admission.

If the goods be found to correspond with the pass, the warehouse-keeper shall certify to that effect on the pass, and the warehousing of such goods shall be deemed to have been completed.

If the goods do not so correspond, the fact shall be reported by the warehouse-keeper for the orders of the Customs-collector, and the goods shall either be returned to the Custom-house in charge of an officer of Customs, or kept in deposit pending such orders as the warehouse-keeper deems most convenient.

If the quantity or value of any goods has been erroneously stated in the bill-of-entry, the error may be rectified at any time before the warehousing of the goods is completed, and not subsequently.

95. Except as provided in section 100, all goods shall be warehoused in the packages, butts, casks, or hogsheads in which they have been imported.

Goods how warehoused.

96. Whenever any goods are lodged in a public warehouse or a licensed private warehouse, the warehouse-keeper, or, in the case of the Bengal Bonded Warehouse Association, the Secretary of the said Association, shall deliver a warrant signed by him as such to the person lodging the goods.

Warrant to be given when goods are warehoused.

Such warrant shall be in the form B hereto annexed, and shall be transferable by endorsement; and the endorsee shall be entitled to receive the goods specified in such warrant on the same terms as those on which the person who originally lodged the goods would have been entitled to receive the same.

Form of warrant.

The [1] Chief Customs-authority [1] may, by notification in the local official Gazette, exempt salt and salted fish from the operation of this section, and may in like manner cancel such exemption.

Rules relating to Goods in a Warehouse.

97. The Customs-collector, or any officer deputed by him for the purpose, shall have access to any private warehouse licensed under this Act.

Access of Customs-officer to private warehouse.

Leg. Changes:—[1] The words "Chief Customs-authority" were substituted for "Local Government" by Act IV of 1914.

Power to cause packages lodged in warehouse to be opened and examined.

98. The Customs-collector may at any time by order in writing direct that any goods or packages lodged in any warehouse shall be opened, weighed or otherwise examined; and, after any goods have been so opened or examined, may cause the same to be sealed or marked in such manner as he thinks fit.

When any goods have been so sealed and marked after examination, they shall not be again opened without the permission of the Customs-collector; and, when any such goods have been opened with such permission, the packages shall, if he thinks fit, be again sealed or marked as before.

99. Any owner of goods lodged in a warehouse shall, at any time within the hours of business, have access to his goods in presence of an officer of Customs, and an officer of Customs shall, upon application for the purpose being made in writing to the Customs-collector, be deputed to accompany such owner.

When an officer of Customs is specially employed to accompany such owner, a sum sufficient to meet the expense thereby incurred shall, if the Customs-collector so require, be paid by such owner to the Customs-collector, and such sum shall, if the Customs-collector so direct, be paid in advance.

100. With the sanction of the Customs-collector, and after such notice given, and under such rules and conditions as the Chief Customs-authority from time to time prescribes, any owner of goods may, either before or after warehousing the same,—

Owner's power to deal with warehoused goods.

- (a) sort, separate, pack and repack the goods, and make such alterations therein as may be necessary for the preservation, sale, shipment or disposal thereof (such goods to be repacked in the packages in which they were imported, or in such other packages as the Customs-collector permits);
- (b) fill up any casks of wine, spirit or beer from any casks of the same secured in the same warehouse;
- (c) mix any wines or spirit of the same sort secured in the same warehouse, erasing from the cask all import-brands, unless the whole of the wine or spirit so mixed be of the same brand;
- (d) bottle-off wine or spirit from any casks;
- (e) take such samples of goods as may be allowed by the Customs-collector with or without entry for home consumption, and with or without payment of duty, except such as may eventually become payable on a deficiency of the original quantity.

After any such goods have been so separated and repacked in proper or approved packages, the Customs-collector may, at the request of the owner of such goods, cause or permit any refuse, damaged or surplus goods remaining after such separation or repacking (or, at the like request, any goods which may not be worth the duty) to be destroyed, and may remit the duty payable thereon.

101. If goods be lodged in a public warehouse, the owner shall pay monthly, on receiving a bill or written demand for the same from the Customs-collector or other officer deputed by him in that behalf, rent and warehouse-dues at such rates as the [1] Chief Customs-officer^[1] may fix.

A table of the rates of rent and warehouse-dues so fixed shall be placed in a conspicuous part of such warehouse.

If any bill for rent or warehouse-dues presented under this section is not discharged within ten days from the date of presentation, the Customs-collector may, in the discharge of such demand (any transfer or assignment of the goods notwithstanding) cause to be sold by public auction, after due notice in the local official Gazette, such sufficient portion of the goods as he may select.

Out of the proceeds of such sale, the Customs-collector shall first satisfy the demand for the discharge of which the sale was ordered and shall then pay over the surplus (if any) to the owner of the goods :

Provided that the application for such surplus be made within one year from the date of the sale of the goods or that sufficient cause be shown for not making it within such period.

102. No warehoused goods shall be taken out of any warehouse, except on clearance for home-consumption or shipment, or for removal to another warehouse, or as otherwise provided by this Act.

103. Any goods warehoused may be left in the warehouse, in which they are deposited, or in any warehouse to which they may in manner hereinafter provided be removed, till the expiry of three years after the date of the bond executed in relation to such goods under section 92. The owner of any goods remaining in a warehouse on the expiry of such period shall clear the same for home-consumption or shipment in manner hereinafter provided :

Provided that when the license for any private warehouse is cancelled, and the Customs-collector gives notice of such cancelment to the owner of any goods deposited in such warehouse, such owner shall in manner herein-after provided, and within seven days from the date on which such notice is given, remove such goods to another warehouse or clear them for home-consumption or shipment.

Of the Removal of Goods from one Warehouse to another.

104. Any owner of goods warehoused under this Act may, at any time within three years from the date of the bond executed in respect of such goods under section 92, and with the permission of the Chief Customs-officer, and on such conditions and after giving such security (if any) as such officer directs, remove goods from one warehouse to another warehouse in the same Port.

Leg. Changes:—[1] The words "Chief Customs-officer" were substituted for "Chief Customs-authority or such officer of Customs as such authority from time to time appoints in this behalf" by Act IV of 1914.

When any owner desires so to remove any goods, he shall apply for permission to do so in such form as the [1] Chief Customs-officer [1] from time to time prescribes.

105. Any owner of goods warehoused at any warehousing Port may, from time to time, within the said period of three years, remove the same by sea or by inland carriage, in order to be re-warehoused at any other warehousing Port.

Power to remove goods from one Port to another.

When any owner desires so to remove any goods for such purpose, he shall apply to the Chief Customs-officer, stating the particulars of the goods to be removed, and the name of the Port to which it is intended that they shall be removed, together with such other particulars, and in such manner and form, as the [1] Chief Customs-officer [1] from time to time prescribes.

Procedure.

106. When permission is granted for the removal of any goods from one warehousing Port to another under section 105, an account containing the particulars thereof shall be transmitted by the proper officer of the Port of removal to the proper officer of the Port of destination ;

Transmission of account of goods to officers at Port of destination.

and the person requiring the removal shall before such removal enter into a bond, with one sufficient surety, in a sum equal at least to the duty chargeable on such goods, for the due arrival and re-warehousing thereof at the Port of destination within such time, as the [1] Chief Customs-officer [1] directs.

Bond for due arrival and re-warehousing

Such bond may be taken by the proper officer, either at the Port of removal or at the Port of destination as best suits the convenience of the owner.

If such bond is taken at the Port of destination, a certificate thereof, signed by the proper officer of such Port, shall, at the time of the removal of such goods, be produced to the proper officer at the Port of removal ; and such bond shall not be discharged unless such goods are produced to the proper officer, and duly re-warehoused at the Port of destination within the time allowed for such removal, or are otherwise accounted for to the satisfaction of such officer ; nor until the full duty due upon any deficiency of such goods, not so accounted for, has been paid.

107. The [1] Chief Customs-officer [1] may permit any person desirous of removing warehoused goods to enter into a general bond, with such sureties, in such amount, and under such conditions, as the [1] Chief Customs-officer [1] approves, for the removal, from time to time, of any goods from one warehouse to another, either in the same or in a different Port, and for the due arrival and re-warehousing of such goods at the Port of destination within such time as such [2] officer directs.

Remover may enter into a general bond.

Leg. Changes :—[1] The words "Chief Customs-officer" were substituted for "Chief Customs-authority" by Act IV of 1914. [2] The word "authority" was altered to 'officer' by the same Act.

Goods on arrival at Port of destination to be subject to same laws as goods on first importation.

108. Upon the arrival of warehoused goods at the Port of destination, they shall be entered and warehoused in like manner as goods are entered and warehoused on the first importation thereof, and under the laws and rules, in so far as such laws and rules are applicable, which regulate the entry and warehousing of such last-mentioned goods.

109. Every bond executed under section 92 in respect of any goods shall, unless the Chief Officer of Customs in any case deems a fresh bond to be necessary, continue in force, notwithstanding the subsequent removal of such goods to another warehouse or warehousing Port.

Clearance for Home-consumption or Shipment.

110. Any owner of goods warehoused may, at any time within three years from the date of the bond executed under section 92 in respect of such goods, clear such goods for home-consumption by paying (a) the duty assessed on such goods under section 87, or, where the duty on such goods is altered under the provisions hereinafter contained, such altered duty; and (b) all rent, penalties, interest and other charges payable to the Customs-collector in respect of such goods.

111. Any owner of goods warehoused may, at any time within three years from the date of the bond executed under section 92 in respect of such goods, clear such goods for shipment to a Foreign Port on payment of all rent, penalties, interest and other charges payable as aforesaid and without payment of import-duty on the same :

Provided that the Governor General in Council may prohibit the shipment for exportation to any specified Foreign Port of warehoused goods in respect of which payment of drawback or transshipment has been prohibited under section 49 or 134 respectively.

112. Provisions and stores warehoused at the time of importation may, within the said period of three years, be shipped without payment of duty for use on board of any vessel proceeding to a Foreign Port.

113. Application to clear goods from any warehouse for home-consumption or for shipment shall be made in such form as the [1]Chief Customs-officer[1] from time to time prescribes.

Such application shall ordinarily be made to the Customs-collector at least twenty-four hours before it is intended so to clear such goods.

Leg. Changes :—[1] The words "Chief Customs-officer" were substituted for "Chief Customs-authority" by Act IV of 1914.

114. If any goods upon which duties are leviable *ad valorem* or on a tariff-valuation receive damage through unavoidable accident after they have been entered for warehousing and assessed under section 87, and before they are cleared for home-consumption, they shall, if the owner so desires, be re-assessed for duty according to their actual value, and a new bond for the same may, at the option of the owner, be executed for the unexpired term of warehousing.

115. If, after any goods entered for warehousing have been assessed under section 87, any alteration is made in the duty leviable upon such goods or in the tariff-valuation (if any) applicable thereto, such goods shall be re-assessed in accordance with [1] such alteration [1].

116. If it appear at the time of clearing any wine, spirit, beer or salt from any warehouse for home-consumption that there exists a deficiency not otherwise accounted for to the satisfaction of the Customs-collector, an allowance on account of ullage and wastage shall be made in adjusting the duties thereon, as follows (namely) :—

- (a) upon wine, spirit and beer in cask to an extent not exceeding the rates specified below, or such other rates as may, from time to time, be prescribed in this behalf by the [2] Chief Customs-authority [2] and notified in the official Gazette :

For any time not exceeding	6 months,	$\frac{1}{2}$	per cent.
exceeding 6 months and not exceeding 12	"	5	"
exceeding 12 months and not exceeding 18	"	$7\frac{1}{2}$	"
exceeding 18 months and not exceeding 2 years,	10	"	"
exceeding 2 years and not exceeding 3	"	12	"

- (b) in the case of salt warehoused in a public warehouse, only the amount actually cleared shall be charged with Customs-duties :
- (c) in the case of salt warehoused in a private warehouse, wastage shall be allowed at such rate as may be prescribed from time to time by the [2] Chief Customs-authority [2] and notified in the local official Gazette.

117. When any wine, spirit, beer or salt lodged in a warehouse is found to be deficient at the time of the delivery therefrom, and such deficiency is proved to be due solely to ullage or wastage, the [3] Chief Customs-officer [3] may direct, in respect of any such article, that allowance be made in any special case for a rate of ullage or wastage exceeding that contemplated in section 116.

Of the Forfeiture and Discharge of the Bond.

118. If any warehoused goods are removed from the warehouse in contravention of section 102 ; or

Leg. Changes:—[1] Substituted by Act VIII of 1899. [2] The words "Chief Customs-authority" were substituted for "Local Government" by Act IV of 1914. [3] The words "Chief Customs-officer" were substituted for "Chief Customs-authority" by Act IV of 1914.

or allowed to remain beyond time fixed, if any such goods have not been removed from the warehouse at the expiration of the time during which such goods are permitted by section 103 to remain in such warehouse ; or

if any goods in respect of which a bond has been executed under section 92, and which have not been cleared for home-consumption or shipment, or removed under this Act, are lost or destroyed otherwise than as provided in section 100 or as mentioned in section 122, or are not accounted for to the satisfaction of the Customs-collector ; or

or taken as samples, if any such goods have been taken under section 100 as samples without payment of duty,

the Customs-collector may thereupon demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods, together with all rent, penalties, interest and other charges payable to the Customs-collector on account of the same.

119. If any owner fails to pay any sum so demanded, the Customs-collector may forthwith either proceed upon the bond executed under section 92, or cause such portion as he thinks fit of the goods (if any) in the warehouse on account of which the amount is due, to be detained with a view to the recovery of the demand ;

and if the demand be not discharged within ten days from the date of such detention (due notice thereof being given to the owner), the goods so detained may be sold by public auction duly advertised in the local official Gazette.

The nett proceeds of any sale so made of goods so detained shall be written off upon the bond in discharge thereof to the amount received, and if any surplus be obtained from such sale, beyond the amount of the demand, such surplus shall be paid to the owner of the goods : Provided that application for the same be made within one year from the sale, or that sufficient cause be shown for not making the application within such period.

No transfer or assignment of the goods shall prevent the Customs-collector from proceeding against such goods in the manner above provided, for any amount due thereon.

120. When any warehoused goods are taken out of any warehouse, the Customs-collector shall cause the fact to be noted on the back of the bond.

Every note so made shall specify the quantity and description of such goods, the purposes for which they have been removed, the date of removal, the name of the person removing them, the number and date of the shipping-bill under which they have been taken away if removed for exportation by sea, or of the bill-of-entry if removed for home-consumption, and the amount of duty paid (if any).

121. A register shall be kept of all bonds entered into for Customs-duties on warehoused goods, and entry shall be made in such register of all particulars required by section 120 to be specified.

When such register shows that the whole of the goods covered by any bond have been cleared for home-consumption or shipment, or otherwise duly accounted for, and when all amounts due on account of such goods have been paid, the Customs-collector shall cancel such bond as discharged in full, and shall on demand deliver it, so cancelled, to the person who has executed or who is entitled to receive it.

Miscellaneous.

122. If any goods in respect of which a bond has been executed under section 92 and which have not been cleared for home-consumption are lost or destroyed by unavoidable accident or delay, the ^[1] Chief Customs-officer^[1] may in ^[2]his discretion remit the duties due thereon :

Provided that, if any such goods be so lost or destroyed in a private warehouse, notice thereof be given to the Customs-collector within forty-eight hours after the discovery of such loss or destruction.

123. The warehouse-keeper in respect of goods lodged in a public warehouse, and the licensee in respect of goods lodged in a private warehouse, shall be responsible for their due reception therein and delivery therefrom, and for their safe custody while deposited therein, according to the quantity, weight or gauge reported by the Custom-house officer who has assessed such goods, allowance being made, if necessary, for ullage and wastage as provided in sections 116 and 117 :

Provided that no owner of goods shall be entitled to claim from the Customs-collector, or from any keeper of a public warehouse, compensation for any loss or damage occurring to such goods while they are being passed into or out of such warehouse, or while they remain therein, unless it be proved that such loss or damage was occasioned by the wilful act or neglect of the warehouse-keeper or of an officer of Customs.

124. Every public warehouse shall be under the lock and key of a warehouse-keeper appointed by the Chief Officer of Customs.

125. ^[3] The Chief Customs-officer^[3] may from time to time determine in what division of any public warehouse, and in what manner, and on what terms, any goods may be deposited, and what sort of goods may be deposited in any such warehouse.

Leg. Changes:—[1] The words "Chief Customs-officer" were substituted for "Chief Customs-authority" by Act IV of 1914. [2] The word 'his' was substituted for 'its' by Act IV of 1914. [3] The words "The Chief Customs-officer" were substituted for "The Chief Customs-authority or such officer of Customs as such authority from time to time appoints in this behalf" by Act IV of 1914.

126. The expenses of carriage, packing and stowage of goods on their reception into or removal from a public warehouse shall, if paid by the Customs-collector or by the warehouse-keeper, be chargeable on the goods and be defrayed by, and recoverable from, the owner, in the manner provided in section 119.

Expenses of carriage, packing, etc., to be borne by owners.

127. All the provisions of this Act relating to private warehouses shall be applicable to the warehouses wherein the Bengal Bonded Warehouse Association receives bonded goods.

Bengal Bonded Warehouse Association.

CHAPTER XII.

TRANSHIPMENT.

128. In the Ports of Calcutta, Madras, Bombay, Karwar, Karachi, Aden, Rangoon, Maulmain, Akyab, Chittagong and such other ports as the [1] Local Government[1] may from time to time, by notification in the [2] local official Gazette[2], direct in this behalf, the Customs collector may, on application by the owner of any goods imported into such Port, and specially and distinctly manifested at the time of importation as for transhipment to some other Customs or Foreign Port, grant leave to tranship (a) the same without payment of the duty (if any) leviable at the Port of transhipment, and without any security or bond for the due arrival and entry of the goods at the Port of destination.

Power to permit transhipment without payment of duty.

In any Customs-port other than a Port in which the preceding clause may for the time being be in force, the Customs-collector may, on application by the owner of any goods so imported and manifested, grant leave for transhipment without payment of the duty (if any) leviable at such Port: Provided that, where the goods so transhipped are dutiable, and are to be removed to some other Customs-port, the applicant shall enter into a bond, with such security as may be required of him, in a sum equal at least to the duty chargeable on such goods, for the due arrival and entry thereof at the Port of destination within such time as such Customs-collector directs.

Superintendence of transhipment.

129. An officer of Customs shall, in every case, be deputed free of charge to superintend the removal of transhipped goods from vessel to vessel.

130. The powers conferred on the Customs-collector by section 128 shall be exercised, and the transhipment shall be performed, subject to such rules as may from time to time be made by the [3] Chief Customs-authority[3].

Subsidiary rules as to transhipment.

No rules made under this section shall come into force until after the expiry of such reasonable time from the date of the publication of the same as the [3] Chief Customs-authority[3], may in each case appoint in this behalf.

Leg. Changes :—[1] The words "Local Government" were substituted for the words "Governor General in Council" by Act IV of 1914. [2] The words "local official Gazette" were substituted for "Gazette of India" by Act IV of 1914. [3] The words "Chief Customs-authority" were substituted for "Local Government" by Act IV of 1914.

Case law :—(a) Effect of transhipment permit, 4 B. 447.

131. All goods transhipped under the second clause of section 128 for removal to a Customs-port shall, on their arrival at such Port, be entered in like manner as goods are entered on the first importation thereof, and under the laws and rules, in so far as such laws and rules can be made applicable, which regulate the entry of such last-mentioned goods.

Entry and warehousing on arrival, of goods transhipped under section 128, clause 2.

132. If two or more vessels belonging wholly or in part to the same owner be at any Customs-port at the same time, any provisions and stores in use or ordinarily shipped for use on board may, at the discretion of the Customs-collector, be transhipped from one such vessel to any other such vessel without payment of import-duty.

Transhipment of provisions and stores from one vessel to another of same owner without payment of duty.

133. A transhipment-fee on any goods or class of goods transhipped under this Act may be levied at such rates, on each hale or package, or according to weight, measurement, quantity or number, and under such rules, as the Local Government, [1] subject to the control [1] of the Governor General in Council, may from time to time, by notification in the local official Gazette, prescribe for each Port.

Levy of transhipment fee.

134. The Governor General in Council may from time to time, by notification in the Gazette of India, prohibit, at any specified Port, or at all Ports, the transhipment of any specified class of goods, generally or when destined for any specified Ports, or prescribe any special mode of transhipping any specified class of goods.

Power to prohibit transhipment.

135. Except as provided in this Act, no goods shall be transhipped at any Port or place in British India.

No goods to be transhipped except as provided.

CHAPTER XIII.

EXPORTATION OR SHIPMENT AND RE-LANDING.

136. Except with the written permission of the Customs-collector, no goods other than passengers' baggage, or ballast urgently required for a vessel's safety, shall be shipped or water-borne to be shipped in any vessel in a Customs-port until an order has been obtained under section 61 for entry outwards of such vessel.

When such order has been obtained, the export-cargo of such vessel may be shipped, subject to the provisions next hereinafter contained.

137. [2] * * * No goods, except passengers' baggage, shall be shipped or water-borne to be shipped for exportation until—

Clearance for shipment.

(a) the owner has delivered to the Customs-collector, or other proper officer, a shipping-bill of such goods in duplicate, in

Leg. Changes:—[1] The words "subject to the control" were substituted for "with the previous sanction" by Act IV of 1914. [2] The words "unless the Chief Customs-authority shall, in the case of any customs-port or wharf, or of any class of goods, otherwise direct by notification in the local official Gazette" were repealed by Act XII of 1914.

such form and containing such particulars in addition to those specified in section 29 as may from time to time be prescribed by the [1] Chief Customs-officer [1] ;

- (b) such owner has paid the duties (if any) payable on such goods ; and
- (c) such bill has been passed by the Customs-collector.

[2] Provided that the Chief Customs-officer may, in the case of any customs-port or wharf, by notification in the local official Gazette, and subject to such restrictions and conditions, if any, as he thinks fit, exempt goods or any specified goods or class of goods or any specified person or class of persons, from all or any of the provisions of this section.

138. Before any warehoused goods or goods subject to excise-duties, or goods entitled to drawback of Customs-duties on exportation, or goods exportable only under particular rules or restrictions, are permitted to be exported, the owner shall, if required so to do, give security by bond in such sum, not exceeding twice the duty leviable on such goods, as the Customs-collector directs, with one sufficient surety, that such goods shall be duly shipped, exported and landed at the place for which they are entered outwards, or shall be otherwise accounted for to the satisfaction of such officer.

Bond required in certain cases before exportation.

139. When goods are cleared for shipment on a shipping-bill presented after port-clearance has been granted, the Customs-collector may, if he thinks fit, levy, in addition to any duty to which such goods are ordinarily liable, a charge not exceeding—

- (a) in the case of goods liable to duties on fixed tariff-valuations, one per cent. on the tariff-value ;
- (b) in the case of all other goods, one per cent. on the market-value.

Nothing in this section shall apply to any shipment of treasure or opium.

140. If any goods mentioned in a shipping-bill or manifest be not shipped, or be shipped and afterwards re-landed, the owner shall, before the expiration of five clear working days, after the vessel on which such goods were intended to be shipped, or from which they were re-landed, has left the Port, give information of such short-shipment or re-landing to the Customs-collector.

Notice of non-shipment or re-landing, and return of duty thereon.

Upon an application being made to the Customs-collector, any duty levied upon goods not shipped, or upon goods shipped and afterwards re-landed, shall be refunded to the person on whose behalf such duty was paid: Provided that no such refund shall be allowed unless information has been given as above required.

Leg. Changes :— [1] The words "Chief Customs-officer" were substituted for "Chief Customs-authority" by Act IV of 1914. [2] Added by Act XII of 1914.

141. If, after having cleared from any Customs-port, any vessel, without having discharged her cargo, returns to such Port, or puts into any other Customs-port, any owner of goods in such vessel, if he desires to land or transship the same or any portion thereof for re-export, may, with the consent of the Master, apply to the Customs-collector in that behalf.

Goods re-landed or transhipped from a vessel returning to Port, or putting into another Port.

The Customs-collector, if he grant the application, shall thereupon send an officer of Customs to watch the vessel, and to take charge of such goods during such re-landing or transshipment.

Such goods shall not be allowed to be transhipped or re-exported free of duty by reason of the previous settlement of duty at the time of first export, unless they are lodged and remain, until the time of re-export, under the custody of an officer of Customs, in a place appointed by the Customs-collector, or are transhipped under such custody.

All expenses attending such custody shall be borne by the owner.

142. In either of the cases mentioned in section 141, the Master of the vessel may enter such vessel inwards, and any owner of goods therein may, with the consent of the Master, land the same under the rules herein contained for the importation of goods.

Vessel returning to Port may enter and land goods under import-rules.

In every such case, any export-duty levied shall be refunded to, and any amount paid in drawback shall be recovered from, such owner.

143. The Customs-collector may, on application by the Master of any vessel which is obliged before completing her voyage to put into any Customs-port for repairs, permit him to land the cargo, or any portion thereof, and to place it in the custody of an officer of Customs during such repairs, and to re-ship and export the same free of duty.

Landing of cargo during repairs.

All expenses attending such custody shall be borne by the Master.

CHAPTER XIV.

SPIRIT.

Exportation of Spirit under Bond for Excise-duty.

144. The Chief Customs-authority may from time to time make rules prescribing the conditions on which spirit manufactured in British India may be removed from any licensed distillery for exportation without payment of excise-duty.

Rules for removal of spirit from distillery, without payment of duty, for exportation.

The person so removing any such spirit shall execute a bond with one or more sureties, in the form marked C hereto annexed, or (when such form is inapplicable or insufficient) in such other form as the said authority from time to time prescribes, conditioned that such duty shall be paid on all such spirit as is—

- (a) not exported within four months from the date of the bond, or
- (b) exported to a Customs-port, unless [1] (either the payment of excise-duty as provided by this Chapter in respect thereof

Leg. Changes :— [1] Inserted by Act II of 1887.

at the Port of destination] or the delivery of the spirit into a warehouse appointed in this behalf by the [1] Chief Customs-authority [1] having authority at that Port is within six months from the date of the bond proved to the satisfaction of the proper officer.

The Chief Officer of Customs of the Port of exportation may, on sufficient cause shown, extend for a further term not exceeding four months the period allowed for the exportation of any such spirit, or for the production of such proof that duty has been [2] so paid or the spirit so delivered [2].

145. Spirit intended for exportation under bond for the excise-duty shall [3] except when provision is made by any enactment for the time being in force for its being immediately deposited in a licensed warehouse [3], be taken from the distillery direct to the Custom-house, under passes to be granted for that purpose by the officers of Excise.

Spirit for export to be taken direct from distillery to Custom-house under pass.

146. Spirit brought to the Custom-house for exportation under bond for the excise-duty [2] may, previous to shipment, be gauged and proved by an officer of Customs, and the quantity of spirit for which credit is to be given in the settlement of any bond [2] may be determined in the same manner.

Gauging and proving of spirit.

147. Excise-duty shall be recoverable previous to shipment upon the excess (if any) of the quantity of spirit passed from a distillery over the quantity ascertained by gauge and proof at the Custom-house, less an allowance for ullage and wastage at such rates as are from time to time prescribed by the [1] Chief Customs-authority [1] and notified in the local official Gazette.

Duty to be recovered on any deficiency in spirit under bond.

148. [4] Notwithstanding anything in the Indian Tariff Act, 1882 [4], XI of 1882,

Duty on spirit exported under bond from one Indian Port to another.

spirit exported under bond for excise-duty from any Customs-port to any other Customs-port shall be charged at the Port of importation with excise-duty at the ordinary rate to which spirit of the like kind and strength is liable at such Port:

[4] Provided that the [1] Chief Customs-authority [1] may authorise the import of such spirit without the payment of that duty at the port of importation when the spirit is to be delivered into a warehouse appointed by the [1] Chief Customs-authority [1] in this behalf, and the excise-duty thereon is to be paid on the removal of the spirit from a warehouse so appointed.

149. Spirit brought to the Custom-house [3] or to a warehouse

Removal for local consumption of spirit intended for exportation.

licensed under any enactment for the time being in force [3] for exportation under bond for the excise-duty may, on payment of such duty, be removed for local consumption under passes to be granted for that purpose by the officers of Excise.

Leg. Changes :—[1] The words "Chief Customs-authority" were substituted for "Local Government" by Act IV of 1914. [2] Substituted by Act II of 1887. [3] Inserted by Act IX of 1886. [4] Added by Act II of 1887.

Credit for every such payment shall be given in discharge of the bond to which it relates.

Drawback of Excise-duty on Export of Spirit.

150. A drawback of excise-duty paid on spirit manufactured in British India and exported to any Foreign Port under the provisions of section 138 shall be allowed by the Customs-collector at the Port of exportation :

Provided that the exportation be made within one year from the date of payment of such excise-duty, and that the spirit, when brought to the Custom-house, be accompanied by a pass in which such payment is certified.

Such drawback shall be regulated by the strength and quantity of such spirit as ascertained by gauge and proof by an officer of Customs.

Miscellaneous.

XI of 1882.

151. [1] Notwithstanding anything in the Indian Tariff Act, 1882[1], if spirit manufactured in British India upon which excise-duty has been paid is exported from one Customs-port to another, and the rate of local excise-duty at the Port of importation is higher than that already paid upon such spirit, a differential duty shall be charged thereon, at such rate as the [2] Chief Customs-authority [2] at such Port may, by notification in the local official Gazette, from time to time prescribe :

[1] Provided that the [2] Chief Customs-authority [2] may authorise the import of such spirit without the payment of the differential duty at the Port of importation when the spirit is to be delivered into a warehouse appointed by the [2] Chief Customs-authority [2] in this behalf, and the differential duty is to be paid on the removal of the spirit from a warehouse so appointed.

152. Rum-shrub, cordial and other such liquor prepared in a licensed distillery under the supervision of the surveyor or officer in charge of the distillery shall be charged with excise-duty under this Act according to the quantity of spirit used in its preparation as ascertained by such surveyor or officer.

The provisions of this Act respecting spirit, except such as relate to gauge and proof, shall apply to such liquor.

153. No drawback shall be allowed for any spirit on which duty has been paid, nor shall the duty due on any spirit under bond be remitted, unless the spirit is shipped from the Custom-house, and in a vessel whereon an officer of Customs has been appointed to superintend the receipt of export-cargo.

154. No spirit shipped for exportation shall be re-landed without a special pass from an officer of Excise, in addition to any permission of an officer of Customs which may be required by the law for the time being in force.

Leg. Changes :—[1] Added by Act II of 1887. [2] The words "Chief Customs-authority" were substituted for "Local Government" by Act IV of 1914.

155. [1] When by any law for the time being in force, a special

Power to make rules for ascertaining that imported spirit has been rendered unfit for human consumption.

duty is imposed on denatured spirit, the Local Government may make rules for ascertaining and determining what spirit imported into British India shall be deemed to be denatured spirit for the purposes of such law, and for causing such spirit to be denatured, if necessary, by its own officers, at the expense of the person importing the same, before the customs duties leviable thereon are levied [1].

Decision where no rules, or their applicability disputed.

In the absence of any such rules, or if any dispute arises as to their applicability, the Chief Customs-officers shall decide what spirit is subject only to the said special duty, and such decision shall be final.

CHAPTER XV.

COASTING-TRADE.

Chapters VII, IX, X and part of XIII inapplicable to coasting trade.

156. Except as hereinafter provided, nothing in Chapters VII, IX, X and sections 136, 139 and 141 to 143 inclusive, of this Act, shall apply to coasting vessels or to goods imported or exported in such vessels.

Power to regulate coasting-trade.

157. The Local Government may, from time to time, make rules consistent with the provisions of this Chapter,—

- (a) extending any provision of the Chapters and sections mentioned in section 156, with or without modification, to any coasting-vessels or to any goods imported or exported in such vessels ;
- (b) exempting any such vessels or goods from any of the other provisions of this Act except those contained in this Chapter ;
- (c) prescribing the conditions on which goods, or any specified class of goods, may be (1) carried in a coasting-vessel, whether shipped at a Foreign Port, or at a Customs-port, or at a place declared under section 12 to be a Port ; (2) shipped in a coasting-vessel before all dutiable goods and goods brought in such vessel from a Foreign Port have been unladen ;
- (d) prohibiting the conveyance of any specified class of goods generally, or to or between specified Ports in a coasting-vessel.

158. Before any coasting-vessel departs from the Port of lading, or, when there are more Ports of lading than one, the first Port of lading, the Master shall fill in, sign and deliver to the Customs-collector a manifest in duplicate containing a true specification of all goods to be carried in such vessel, in such form, and accompanied by such shipping-bills or other documents, as may from time to time be prescribed by the Chief Customs-authority.

Coasting-vessels to deliver manifest and obtain port-clearance before leaving Port of lading.

If the Customs-collector sees no objection to the departure of the vessel, he shall retain the duplicate and return the original manifest, dated and signed by him, together with its accompaniments ; and such manifest shall be the port-clearance of the vessel, unless, under the general orders of the Chief Customs-authority, a separate port-clearance be prescribed.

Leg. Changes :—[1] Substituted by Act XII of 1914.

159. Within twenty-four hours after the arrival of any coasting-vessel at any Customs-port, whether intermediate or final, and before any goods are there discharged, the manifest, together with the other documents referred to in section 158, shall be delivered to the Customs-collector, who shall note on the manifest the date of delivery.

If the vessel has touched at any Foreign Port between such Port of arrival and her last preceding Customs-port of departure, the Master shall append to the manifest a declaration to that effect, and shall also indicate on the manifest the portions (if any) of the cargo therein described which have been discharged, and subjoin thereto a true specification of all goods shipped at such Port.

If the Customs-port of arrival be an intermediate Port, and a portion only of the cargo is to be discharged thereat, the Master shall likewise so deliver an extract from the manifest signed by him, relating to such portion, and the Customs-collector shall, after verifying such extract, return to him the original manifest and all documents accompanying it except those relating to such portion.

If in any case the cargo actually on board any coasting-vessel on her arrival at any Customs-port does not, owing to short-shipment, re-landing or other cause correspond with the specification thereof in the manifest returned to the Master under the second clause of section 158, such Master shall, before delivery of such manifest under this section, note thereon the particulars of the difference.

The Customs-collector, when satisfied with the manifest and other documents, shall grant an order to break bulk.

160. Before any coasting-vessel departs from any Customs-port at which she has touched during her voyage, the Master shall re-deliver the original manifest to the Customs-collector, after indicating thereon the portions (if any) of the cargo therein described which have been discharged, and subjoining thereto a true specification of all goods shipped at such port. He shall also deliver a duplicate, signed by him, of the specification so subjoined.

If the Customs-collector sees no objection to the departure of the vessel, he shall proceed as prescribed in the second clause of section 158.

161. The Customs-collector may, for sufficient reason, refuse port-clearance to any coasting-vessel declared to be bound to, or about to touch at, any Customs-port, unless the owner or Master gives a bond with such security as the Customs-collector deems sufficient, for the production to the Customs-collector of a certificate from the proper officer of the Port to which such vessel is said to be bound, of her arrival at such Port within a reasonable time to be prescribed in each case by the Customs-collector.

162. When permission has been granted by the Customs-collector for the discharge of cargo from any coasting-vessel—

(a) if the vessel has not touched at any intermediate Foreign Port in the course of her voyage, and has not on board any dutiable

goods, the cargo may be forthwith landed and removed by the owner, without entry thereof at the Custom-house and clearance for home-consumption, but subject to such general check and control as the [1] Chief Customs-officer [1] may from time to time by rules prescribe ;

- (b) if the vessel has so touched at any such Port, or has on board any such goods, such vessel shall be subject to all the provisions of Chapter VII of this Act relating to vessels arriving and such goods, and until such goods have been duly discharged all other goods on board shall be subject to the provisions of Chapter IX of this Act relating to goods imported.

Goods on coasting-vessel, if exposable, not to be unladen without permission.

163. If any of the goods on board of any coasting-vessel be subject to any excise-duty, they shall not be unladen without the permission of the proper officer of Excise.

164. Notwithstanding anything hereinbefore contained, [2] the Chief Customs-officer may grant or [2] authorize the Customs-collector to grant a general pass, on any conditions which [3] the Chief Customs-officer [3] thinks expedient for the lading and clearance, and for the entry and unloading, of any coasting steam-vessel at any Ports of despatch or destination, or at any intermediate Ports at which she touches for the purpose of receiving goods or passengers.

Such pass shall be valid throughout British India, or for such Ports only as may be specified therein.

Any such general pass may be revoked by order of the [1] Chief Customs-officer [1] by whom the grant thereof [4] was made or authorised [4] by notice in writing under the hand of [3] the Chief Customs-officer [3] delivered to the Master or to the owner of such steam-vessel, or to any of the crew on board.

165. The Chief Customs-authority may direct that the Master of any coasting-vessel which is square-rigged or propelled by steam shall keep, or cause to be kept, a cargo-book, stating the name of the Master, the vessel, the Port to which she belongs, and the Port to which on each voyage she is bound.

At every Port of lading such Master shall enter, or cause to be entered, in such book the name of such Port and an account of all goods there taken on board of such vessel, with a description of the packages, and the quantities and descriptions of the goods, contained therein or stowed loose, and the names of the respective shippers and consignees, in so far as such particulars are known to him.

Leg Changes:—[1] The words "Chief Customs-officer" were substituted for "Chief Customs authority" by Act IV of 1914. [2] The words "the Chief Customs officer may grant or" were substituted for "the Chief Customs-authority may" by Act IV of 1914. [3] The words "Chief Customs-officer" were substituted for "such authority" by Act IV of 1914. [4] The words "was made or authorised" were substituted for "was authorized" by Act IV of 1914.

At every Port of discharge of any such goods such Master shall enter, or cause to be entered, in such book the respective days on which such goods or any of them are delivered out of such vessel.

The respective times of departure from every Port of lading, and of arrival at every Port of discharge, shall in like manner be duly entered.

Every such Master shall, on demand, produce his cargo-book for the inspection of any officer of Customs, and such officer shall be at liberty to make any note or remark therein.

The Chief Customs-authority may, in the case of any vessel the Master whereof has been directed to keep a cargo-book under this section, dispense with the manifest required under sections 158, 159 and 160.

166. Any duly empowered officer of Customs may go on board of any coasting-vessel in any Port or place in British India, and may at any period of a voyage search any such vessel and examine all goods on board, and all goods then lading or unlading, and may demand the production of any document which ought to be on board of any such vessel.

Power to board
and examine coast-
ing vessels.

The Customs-collector may further require that any such document belonging to any coasting-vessel then in port shall be brought to him for inspection.

CHAPTER XVI.

OFFENCES AND PENALTIES.

167. The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively.

Offences.	Section of this Act to which offence has reference.	Penalties.
1.—Contravening any rule made under this Act.	General ...	Penalty not exceeding five hundred rupees.
2.—If any goods be landed or shipped, or If an attempt be made to land or ship any goods, or If any goods be brought into any bay, river, creek or arm of the sea, for the purpose of being landed or shipped, at any Port or place which, at the date of such landing, shipment, attempt or bringing, is not a Port for the landing and shipment of goods,	11	such goods shall be liable to confiscation.

Offences.	Section of this Act to which offence has reference.	Penalties.
<p>3.—If any person ship or land goods, or aid in the shipment or landing of goods, or knowingly keep or conceal, or knowingly permit or procure to be kept or concealed, any goods shipped or landed, or intended to be shipped or landed, contrary to the provisions of this Act ; or</p> <p>if any person be found to have been on board of any vessel liable to confiscation on account of the commission of an offence under [1] No. 4 [1] of this section, while such vessel is within any bay, river, creek or arm of the sea which is not a Port for the [1] shipment and landing [1] of goods,</p>	<p>General ...</p> <p>11</p>	<p>such person shall be liable to a penalty not exceeding one thousand rupees.</p>
<p>4.—If any vessel which has been within the limits of any Port in British India with cargo on board, be afterwards found in any port, bay, river, creek or arm of the sea in British India, light or in ballast, and if the Master be unable to give a due account of the Customs-port where such vessel lawfully discharged her cargo,</p>	<p>11</p>	<p>such vessel shall be liable to confiscation.</p>
<p>5.—If any goods are put, without the authority of the proper officer of Customs, on board of any tug-steamers or pilot-vessel from any sea-going vessel inward-bound ; or</p> <p>if any goods are put, without such authority, out of any tug-steamers or pilot-vessel for the purpose of being put on board of any such vessel outward bound ; or</p> <p>if any goods on which drawback has been granted are put, without such authority, on board of any tug steamers or pilot-vessel for the purpose of being reloaded,</p>	<p>11</p>	<p>such goods shall be liable to confiscation, and the Master of every such tug-steamers or pilot-vessel shall be liable to a penalty not exceeding one thousand rupees.</p>

Leg. Changes :—[1] Substituted by Act XVI of 1891.

Offences.	Section of this Act to which offence has reference.	Penalties.
6.—If any vessel arriving at, or departing from, any Customs-port fails, when so required under section 17, to bring to at any such station as has been appointed by the [1] Chief Customs-officer [1] for the boarding or landing of an officer of Customs.	17	the Master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
7.—If any vessel arriving at any Customs-port, after having come to its proper place of mooring or unloading, removes from such place, except with the authority of the Conservator, obtained in accordance with the provisions of the Indian Ports Act, 1875, or other lawful authority, to some other place of mooring or unloading, or	...	the Master of such vessel shall be liable to a penalty not exceeding five hundred rupees, and the vessel, if not entered, shall not be allowed to enter until the penalty is paid.
if any vessel not brought into Port by a Pilot be not anchored or moored in accordance with any direction of the [1] Chief Customs-officer [1] under section 17.	17	
8.—If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act, be imported into or exported from British India contrary to such prohibition or restriction, or if any attempt be made so to import or export any such goods, or if any such goods be found in any package produced to any officer of Customs as containing no such goods, or if any such goods, or any dutiable goods be found either before or after landing or shipment to have been concealed in any manner on board of any vessel within the limits of any port in British India, or if any goods, the exportation of which is prohibited or restricted as aforesaid, be brought to any wharf in order to be put on board of any vessel for exportation contrary to such prohibition or restriction,	18 & 19	such goods shall be liable to confiscation; any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees.

Leg. Changes:—[1] The words "Chief Customs-officer." were substituted for "Chief Customs-authority" by Act IV of 1914.

Offences.	Section of this Act to which offence has reference.	Penalties.
9.—If, upon an application to pass any goods through the Custom-house, any person not being the owner of such goods, and not having proper and sufficient authority from the owner, subscribes or attests any document relating to any goods on behalf of such owner,	General ...	such person shall be liable to a penalty not exceeding one thousand rupees.
10.—If any goods, on the entry of which for re-export drawback has been paid, are not duly exported, or are unshipped or re-landed at any Customs-port (not having been duly re-landed or discharged under the provisions of this Act).	42 & 43	such goods, together with any vessel used in so unshipping or re-landing them, shall be liable to confiscation ; and the Master of the vessel from which such goods are so unshipped or re-landed, and any person by whom or by whose orders or means such goods are so unshipped or re-landed, or who aids or is concerned in such unshipping or re-landing shall be liable to a penalty not exceeding three times the value of such goods or not exceeding one thousand rupees.
11.—If any wine, spirit, provisions or stores be not laden on board of the vessel on board of which they should, under the provisions of section 45, 46, 47 or 48, be laden, or be unladen from such vessel without the permission of the proper officer of Customs,	44 to 48	such wine, spirit, provisions or stores shall be liable to confiscation.
12.—If any goods be entered for drawback, which are of less value than the amount of the drawback claimed,	50	such goods shall be liable to confiscation.
13.—If, in any river or port wherein a place has been fixed under section 53 by the [1] Chief Customs authority [1] any vessel arriving passes beyond such place, before delivery of a manifest to the Pilot, officer of Customs, or other person duly authorized to receive the same,	53	the Master of such vessel shall be liable to a penalty not exceeding one thousand rupees.

Leg. Changes :—[1] The words "Chief Customs-authority" were substituted for "Local Government" by Act IV of 1914.

Offences.	Section of this Act to which offence has reference.	Penalties.
14.—If the Master of any vessel arriving, which remains outside or below any place so fixed, wilfully omits, for the space of twenty-four hours after anchoring, to deliver a manifest as required by this Act,	53	such Master shall be liable to a penalty not exceeding one thousand rupees.
15.—If, after any vessel arriving has entered any Customs-port in which a place has not been fixed under section 53, the Master of such vessel wilfully omits, for the space of twenty-four hours after anchoring, to deliver a manifest as required by this Act	54	such Master shall be liable to a penalty not exceeding one thousand rupees.
16.—If any manifest delivered under section 53, 54, 60, 63 or 66 is not signed by the person delivering the same and is not in the form or does not contain the particulars required by section 55 or 63, as the case may be, in so far as such particulars are applicable to the ship, cargo and voyage; or if any manifest so delivered does not contain a specification true to the best of such person's knowledge of all goods imported or to be exported in such vessel,	55 & 63	the person delivering such manifest shall be liable to a penalty not exceeding one thousand rupees.
17.—If any goods entered in the import-manifest of a vessel are not found on board of the vessel; or if the quantity so found is short, and if such deficiency is not accounted for to the satisfaction of the officer in charge of the Custom-house,	55 & 64	the Master of such vessel shall be liable to a penalty not exceeding twice the amount of duty chargeable on the missing or deficient goods, if they be dutiable and the duty leviable thereon can be ascertained, or otherwise to a penalty not exceeding five hundred rupees for every missing or deficient package or separate article.
18.—If any person required by this Act to receive a manifest from any Master of a vessel, refuses so to do, or fails to countersign the same or to enter thereon the particulars referred to in section 56,	53, 54 & 56	such person shall be liable to a penalty not exceeding five hundred rupees.
19.—If bulk be broken in any vessel previous to the grant by the Customs-collector of an order for entry inwards or a special pass permitting bulk to be broken,	57 & 59	the Master of such vessel shall be liable to a penalty not exceeding one thousand rupees.

Offences.	Section of this Act to which offence has reference.	Penalties.
<p>20.—If any bill-of-lading or copy required under section 58 is false and the Master is unable to satisfy the Customs-collector that he was not aware of the fact; or if any such bill or copy has been altered with fraudulent intent; or</p> <p>if the goods mentioned in any such bill or copy have not been <i>bona fide</i> shipped as shown therein; or</p> <p>if any such bill-of-lading or any bill-of-lading of which a copy is delivered, has not been made previously to the departure of the vessel from the place where the goods referred to in such bill-of-lading were shipped; or</p> <p>if any part of the cargo has been staved, destroyed or thrown overboard; or if any package has been opened and such part of the cargo or such package be not accounted for to the satisfaction of the Customs-collector.</p>	58	the Master of the vessel shall be liable to a penalty not exceeding one thousand rupees.
<p>21.—If any Master of a vessel attempts to depart without a port-clearance,</p>	62	such Master shall be liable to a penalty not exceeding five hundred rupees.
<p>22.—If any vessel actually departs without a port-clearance,</p>	62	the Master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
<p>23.—If any Pilot takes charge of any vessel proceeding to sea, notwithstanding that the Master of such vessel does not produce a port-clearance,</p>	62	such Pilot, on conviction before a Magistrate, shall be liable to fine not exceeding one thousand rupees.
<p>24.—If any Master of a vessel refuses to receive on board an officer of Customs deputed under section 67,</p>	68	such Master shall be liable to a penalty not exceeding five hundred rupees for each day during which such officer is not received on board; and the vessel, if not entered, shall not be allowed to enter until such penalty is paid.
<p>25.—If any Master of a vessel refuses to receive on board one servant of such officer, or to provide such officer and servant with suitable shelter and accommodation, and with a due allowance of fresh water, and with the means of cooking on board,</p>	68	such Master shall, in each such case, be liable to a penalty not exceeding five hundred rupees.

Offences.	Section of this Act to which offence has reference.	Penalties.
<p>26.—If any Master of a vessel refuses to allow such vessel, or any box, place or closed receptacle in such vessel, to be searched when so required by an officer of Customs bearing a written order to search : or if an officer of Customs places any lock, mark or seal upon any goods in a vessel, and such lock, mark or seal is wilfully opened, altered or broken, before due delivery of such goods ; or if any such goods are secretly conveyed away ; or if any hatchway or entrance to the hold of a vessel, after having been fastened down by an officer of Customs, is opened without his permission,</p>	69	<p>the Master of such vessel shall be liable, upon conviction before a Magistrate, to a fine not exceeding one thousand rupees.</p>
<p>27.—If the Master of any vessel laid up by the withdrawal of the officer of Customs shall, before application is made by him for an officer of Customs to superintend the receipt of cargo, cause or suffer to be put on board of such vessel any goods whatever, in contravention of section 70,</p>	70	<p>such Master shall be liable to a penalty not exceeding one thousand rupees, and the goods, if protected by a pass, shall be liable to be re-landed for examination at the expense of the vessel, and, if not protected by a pass, shall be liable to confiscation.</p>
<p>28.—If any Master of a vessel, in any case other than that provided for by No. 27, causes or suffers any goods to be discharged, shipped or water-borne contrary to any of the provisions of section 70, 72 or 75,</p>	70, 72 & 75	<p>such Master shall be liable to a penalty not exceeding one thousand rupees ; and all goods so discharged, shipped or water-borne shall be liable to confiscation.</p>
<p>29.—If, when a boat-note is required by section 76, any goods water-borne for the purpose of being landed from any vessel, and warehoused or passed for importation, or of being shipped for exportation, be found without such note ; or if any goods are found on board any boat in excess of such boat-note, whether such goods are intended to be landed from, or to be shipped on board of, any vessel,</p>	76	<p>such goods shall be liable to confiscation ; and the person by whose authority the goods are being landed or shipped, and the person in charge of the boat, shall each be liable to a penalty not exceeding twice the amount of duty (if any) leviable on the said goods.</p>

Offences.	Section of this Act to which offence has reference.	Penalties.
30.—If any person refuses to receive, or fails to sign, or to note the prescribed particulars upon, any boat-note (a), as required by section 76, or if any Master or officer of a vessel receiving the same fails to deliver it when required so to do by any officer of Customs authorized to make such requisition,	76	Such person, Master or officer shall be liable to a penalty not exceeding five hundred rupees.
31.—If any goods are, without permission, shipped or water-borne to be shipped, or are landed, except from or at a wharf or other place duly appointed for the purpose; or	73	such goods shall be liable to confiscation; and the person by whose authority the goods are shipped, landed, water-borne or transhipped, and the person in charge of the vessel employed in conveying them, shall each be liable to a penalty not exceeding twice the amount of the duty (if any) leviable on such goods.
if any goods water-borne for the purpose of being landed or shipped or not landed or shipped without unnecessary delay; or	77	
if the boat containing such goods be found out of the proper track between the vessel and the wharf or other proper place of landing or shipping, and such deviation be not accounted for to the satisfaction of the Customs-collector; or		
if any goods are transhipped contrary to the provisions of section 78,		
32.—If, after the issue of a notification under section 79 with regard to any port, any goods are found within the limits of such Port on board of any boat not duly licensed and registered,	79	such goods, unless they are covered by a special permit from the Customs-collector, shall be liable to confiscation, and the owner or the person in charge of the boat shall be liable to a penalty not exceeding one hundred rupees.
33.—If any Master of a vessel discharges or suffers to be discharged any goods not duly entered in the manifest of such vessel,	55 & 82	such Master shall be liable to a penalty not exceeding one thousand rupees.
34.—If any goods are found concealed in any place, box or closed receptacle in any vessel, and or not duly accounted for to the satisfaction of the officer in charge of the Custom-house,	General	such goods shall be liable to confiscation.

Case-law:—(a) Master allowing boat-load to leave vessel without boat-note, 1 Weir 897.

Offences.	Section of this Act to which offence has reference.	Penalties.
35.—If any goods are found ^a on board in excess of those entered in the manifest, or not corresponding with the specification therein contained.	55 & 82	such goods shall be liable to confiscation, or to be charged with such increased rates of duty as the Chief Officer of Customs directs.
36.—If, after any goods have been landed and before they have been passed through the Custom-house, the owner removes or attempts to remove them, with the intention of defrauding the revenue,	86 & 87	such goods shall be liable to confiscation; or if the goods cannot be recovered the owner shall be liable, in addition to full duty, to a penalty not exceeding twice the amount of such duty, if the goods be dutiable and the duty leviable thereon can be ascertained; or otherwise to a penalty not exceeding one thousand rupees for every missing or deficient package or separate article.
<p>37.—If it be found, when any goods are entered at, or brought to be passed through, a Custom-house, either for importation or exportation, that—</p> <p>(a) the packages in which they are contained differ widely from the description given in the bill-of-entry or application for passing them; or</p> <p>(b) the contents thereof have been wrongly described in such bill or application as regards the denominations, characters or conditions according to which such goods are chargeable with duty, or are being imported or exported; or</p> <p>(c) the contents of such packages have been misstated in regard to sort, quality, quantity or value; or</p> <p>(d) goods not stated in the bill-of-entry or application have been concealed in, or mixed with, the articles specified therein, or have apparently been packed so as to deceive the officers of Customs, and such circumstance is not accounted for to the satisfaction of the Customs-collector,</p>	86 & 137	such packages together with the whole of the goods contained therein, shall be liable to confiscation, and every person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees.

Offences.	Section of this Act to which offence has reference.	Penalties.
38.—If, when goods are passed by tale or by package, any omission or misdescription thereof tending to injure the revenue be discovered,	86 & 94	the person guilty of such omission or misdescription shall be liable to a penalty not exceeding ten times the amount of duty which might have been lost to Government by such omission or misdescription, unless it be proved to the satisfaction of the officer in charge of the Custom-house that the variance was accidental.
39.—If, without entry duly made, any goods are taken or passed out of any Custom-house or wharf,	86	the person so taking or passing such goods shall, in every such case, be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation.
40.—If any prohibited or dutiable goods are found, either before or after landing, concealed in any passenger's baggage,	General	such passenger shall be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation.
41.—If any goods entered to be warehoused are carried into the warehouse, unless with the authority, or under the care of the proper officers of Customs, and in such manner, by such persons, within such time, and by such roads or ways, as such officers direct,	93	such goods shall be liable to confiscation, and any person so carrying them shall be liable to a penalty not exceeding one thousand rupees.
42.—If any goods entered to be warehoused are not duly warehoused in pursuance of such entry, or are withheld, or removed from any proper place of examination before they have been examined and certified by the proper officer,	94	such goods shall be deemed not to have been duly warehoused, and shall be liable to confiscation.
43.—If any warehoused goods be not warehoused in accordance with sections 94 and 95,	94 & 95	such goods shall be liable to confiscation.
44.—If the licensee of any private warehouse licensed under this Act does not open the same when required so to do by any officer entitled to have access thereto, or, upon demand made by any such officer, refuses access to any such officer,	97	such licensee shall be liable to a penalty not exceeding one thousand rupees, and shall further be liable to have his license forthwith cancelled.

Offences.	Section of this Act to which offence has reference.	Penalties.
45.—If the keeper of any public warehouse, or the licensee of any private warehouse, neglects to stow the goods warehoused therein, so that easy access may be had to every package and parcel thereof,	Chap. XI	such keeper or licensee shall, for every such neglect, be liable to a penalty not exceeding fifty rupees.
46.—If the owner of any warehoused goods, or any person in the employ of such owner, clandestinely opens any warehouse, or, except in presence of the proper officer of Customs, gains access to his goods,	99	such owner or person shall, in every such case, be liable to a penalty not exceeding one thousand rupees.
47.—If any warehoused goods are opened in contravention of the provisions of section 98; or any alteration be made in such goods or in the packing thereof, except as provided in section 100,	98 & 100	such goods shall be liable to confiscation.
48.—If any goods lodged in a private warehouse are found at the time of delivery therefrom to be deficient, and such deficiency is not due solely to ullage or wastage, as allowed under sections 116 and 117,	123	the licensee of such warehouse shall unless the deficiency be accounted for to the satisfaction of the Customs-collector, be liable to a penalty equal to five times the duty chargeable on the goods so deficient.
49.—If the keeper of any public warehouse, or the licensee of any private warehouse, fails, on the requisition of any officer of Customs, to produce any goods which have been deposited in such warehouse, and which have not been duly cleared and delivered therefrom, and is unable to account for such failure to the satisfaction of the Customs-collector,	123	such keeper or licensee shall, for every such failure, be liable to pay the duties due on such goods, and also a penalty not exceeding fifty rupees in respect of every package or parcel so missing or deficient.
50.—If any goods after being duly warehoused, are fraudulently concealed in, or removed from, the warehouse, or abstracted from any package, or transferred from one package to another, or otherwise, for the purpose of illegal removal or concealment,	Chap. XI	such goods shall be liable to confiscation, and any person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees.
51.—If any goods lodged in a private warehouse are found to exceed the registered quantity,	Ditto	such excess, unless accounted for to the satisfaction of the officer in charge of the Custom-house, shall be charged with five times the ordinary duty thereon.

Offences.	Section of this Act to which offence has reference.	Penalties.
52.—If any goods be removed from the warehouse in which they were originally deposited, except in the presence, or with the sanction, of the proper officer, or under the proper authority for their delivery.	Chap. XI	such goods shall be liable to confiscation, and any person so removing them shall be liable to a penalty not exceeding one thousand rupees.
53.—If any person illegally takes any goods out of any warehouse without payment of duty, or aids, assists or is concerned therein,	Ditto	such person shall be liable to a penalty not exceeding one thousand rupees.
54.—If any person contravenes any rule regarding the process of transshipment made by the [1] Chief Customs-authority,[1] or	130	such person shall be liable to a penalty not exceeding one thousand rupees; and any goods in respect of which such offence has been committed shall be liable to confiscation.
any prohibition or order relating to transshipment notified by the Governor General in Council, or transships goods not allowed to be transhipped,	134	
55.—If any goods be taken on board of any vessel at any Customs-port in contravention of section 136,	136	the Master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
56.—If any goods not specified in a duly passed shipping bill are taken on board of any vessel, contrary to the provisions of section 137,	137	the Master of such vessel shall be liable to a penalty not exceeding fifty rupees for every package of such goods.
57.—If any goods specified in the manifest of any vessel, or in any shipping bill, are not duly shipped before the departure of such vessel, or are re-landed, and notice of such short-shipment or relanding be not given as required by section 140,	140	the owner of such goods shall be liable to a penalty not exceeding one hundred rupees; and such goods shall be liable to confiscation.
58.—If any goods duly shipped on board of any vessel be landed, except under section 141, 142 or 143, at any place other than that for which they have been cleared,	141	the Master of such vessel shall, unless the landing be accounted for to the satisfaction of the Customs-collector, be liable to a penalty not exceeding three times the value of such goods so landed.

Leg. Changes:—[1] The words "Chief Customs-authority" were substituted for "Local Government" by Act IV of 1914.

Offences.	Section of this Act to which offence has reference.	Penalties.
59.—If any goods on account of which drawback has been paid be not found on board of any vessel referred to in section 142,	[1] 142	the Master of such vessel shall be liable to a penalty not exceeding the entire value of such goods, unless the fact be accounted for to the satisfaction of the Customs-collector.
60.—If any person, without a special pass from an officer of Exciise at the place of exportation, re-lands or attempts to re-land any spirit shipped for exportation,	154	such person shall be liable to a penalty not exceeding five hundred rupees.
61.—If any person wilfully contravenes any rule relating to spirits made under section 155,	155	such person shall be liable to a penalty not exceeding five hundred rupees; and all such spirit shall be liable to confiscation.
62.—If, in contravention of any rules made under section 157, any goods are taken into, or put out of, or carried in, any coasting-vessel; or if any such rules be otherwise infringed,	157	the Master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
63.—If, contrary to any such rules, any coasting-vessel touches at any Foreign Port, or deviates from her voyage, unless forced by unavoidable circumstances; or if the Master of any such vessel which has touched at a Foreign Port fails to declare the same in writing to the Customs-collector at the Customs-port at which such vessel afterwards first arrives,	159	the Master of such vessel shall be liable to a penalty not exceeding one thousand rupees; and if any goods liable to export-duty have been landed from, or any goods liable to import-duty have been shipped in, such vessel at such Foreign Port, such Master shall further be liable to a penalty not exceeding three times the duty which would have been leviable on such goods if they had been exported from, or imported at a Customs-port to or from a Foreign Port, as the case may be.
64.—If in the case of any coasting-vessel any of the provisions of section 158, 159 or 160 are not complied with,	158, 159 & 160	the Master of such vessel shall in each such case be liable to a penalty not exceeding five hundred rupees.
65.—If the person executing any bond given under section 161 fail to produce the certificate mentioned in the same section, or to show sufficient reason for its non-production,	161	such person shall be bound to pay a penalty equal to double the amount of Customs-duties which would have been chargeable on the export-cargo of the vessel had she been declared to be bound to a Foreign Port.

Leg. Changes :—[1] Substituted by Act XII of 1891.

Offences.	Section of this Act to which offence has reference.	Penalties.
66.—If the Master of any coasting-vessel violates any of the conditions under which a general pass for such vessel has been granted,	164	such Master shall be liable to a penalty not exceeding one thousand rupees.
67.—If any Master of a coasting-vessel contravenes any of the provisions of section 165,	165	such Master shall be liable to a penalty not exceeding five hundred rupees.
68.—If, upon examination, any package entered in the cargo-book required by section 165, as containing dutiable goods, is found not to contain such goods; or if any package is found to contain dutiable goods not entered, or not entered as such, in such book,	165	such package, with its contents, shall be liable to confiscation.
69.—If the Master of any coasting-vessel required under section 165 to keep a cargo-book fails correctly to keep, or to cause to be kept, such book, or, to produce the same on demand; or if at any time there be found on board of any such vessel any goods not entered in such book as laden, or any goods noted as delivered; or if any goods entered as laden and not noted as delivered, be not on board,	165	such Master shall be liable to a penalty not exceeding five hundred rupees.
70.—If, contrary to the provisions of this or any other law for the time being in force relating to the Customs, any goods are laden on board of any vessel in any Customs port and carried coastwise; or if any goods which have been brought coastwise are so unladen in any such Port; or if any goods are found on board of any coasting-vessel without being entered in the manifest or cargo-book or both (as the case may be) of such vessel,	Chapter XV	such goods shall be liable to confiscation, and the Master of such vessel shall be liable to a penalty not exceeding five hundred rupees.
71.—If the Master of any coasting-vessel refuses to bring any document to the Customs-collector when so required under section 166,	166	such Master shall be liable to a penalty not exceeding two hundred rupees.

Offences.	Section of this Act to which offence has reference.	Penalties.
<p>72.—If any person makes or signs, or uses, any declaration or document used in the transaction of any business relating to the Customs, knowing such declaration or document to be false in any particular; or counterfeits, falsifies or fraudulently alters or destroys any such document, or any seal, signature, initials or other mark made or impressed by any officer of Customs in the transaction of any business relating to the Customs; or,</p> <p>being required under this Act to produce any document, refuses or neglects to produce such document; or,</p> <p>being required under this Act to answer any question put to him by an officer of Customs, does not truly answer such question,</p>	General	such person shall, on conviction of any such offence before a Magistrate, be liable to a fine not exceeding one thousand rupees.
<p>73.—If any person on board of any vessel or boat in any Customs-port, or who has landed from any such vessel or boat, upon being asked by any such officer whether he has dutiable or prohibited goods about his person or in his possession, declares that he has not, and if any such goods are, after such denial, found about his person or in his possession,</p>	General	such goods shall be liable to confiscation, and such person shall be liable to a penalty not exceeding three times the value of such goods.
<p>74.—If any officer of Customs requires any person to be searched for dutiable or prohibited goods, or to be detained, without having reasonable ground to believe that he has such goods about his person, or has been guilty of an offence relating to the Customs,</p>	169	such officer shall, on conviction before a Magistrate, be liable to a fine not exceeding five hundred rupees.
<p>75.—If any officer of Customs or other person duly employed for the prevention of smuggling, is guilty of a wilful breach of the provisions of this Act,</p>	General	such officer or person shall, on conviction before a Magistrate, be liable to simple imprisonment for any term not exceeding two years, or to fine, or to both.

Offences.	Section of this Act to which offence has reference.	Penalties.
76.—If any officer of Customs, or other person duly employed for the prevention of smuggling, practises, or attempts to practise, any fraud for the purpose of injuring the Customs-revenue, or abets or connives at any such fraud, or any attempt to practise any such fraud,	General	such officer or person shall, on conviction before a Magistrate, be liable to simple imprisonment for any term not exceeding two years, or to fine, or to both.
77.—If any Police-officer, whose duty it is, under section 180, to send a written notice or cause goods to be conveyed to a Custom-house, neglects so to do,	180	such officer shall, on conviction before a Magistrate, be liable to a penalty not exceeding one hundred rupees.
78.—If any person intentionally obstructs any officer of Customs or other person duly employed for the prevention of smuggling, in the exercise of any powers given under this Act to such officer or person,	General	such person shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding six months, or to a fine not exceeding one thousand rupees, or to both.
79.—If any officer of Customs, except in the discharge in good faith of his duty as such officer, discloses any particulars learned by him in his official capacity in respect of any goods or shows any samples delivered to him in such capacity, or if any officer of Customs, except as permitted by this Act, parts with the possession of any samples delivered to him in his official capacity,	195	he shall be liable to a penalty not exceeding one thousand rupees.
80.—If any person, without the approval of the Customs-collector under section 202, acts as an agent for the transaction of business as therein mentioned,	202	such person shall be liable to a penalty not exceeding five hundred rupees.

Nothing in the second column of the above schedule shall be deemed to have the force of law.

Packages and contents included in confiscation of goods.

Also conveyances and animals used in removal.

Tackle, etc., included in confiscation of vessels.

166. The confiscation of any goods under this Act includes any package in which they are found, and all the other contents thereof.

Every vessel, cart or other means of conveyance, and every horse or other animal, used in the removal of any goods liable to confiscation under this Act shall in like manner be liable to confiscation.

The confiscation of any vessel under this Act includes her tackle, apparel and furniture.

CHAPTER XVII.

PROCEDURE RELATING TO OFFENCES, APPEALS, ETC.

169. Any officer of Customs duly employed in the prevention of smuggling may search any person on board of any vessel in any Port in British India, or any person who has landed from any vessel :

Provided that such officer has reason to believe that such person has dutiable or prohibited goods secreted about his person.

Persons may, before search, require to be taken before Magistrate or Customs-collector.

170. When any officer of Customs is about to search any person under the provisions of section 169, such person may require the said officer to take him, previous to search, before the nearest Magistrate or Customs-collector.

If such requisition be made, the officer of Customs may detain the person making it until he can bring him before the nearest Magistrate or Customs-collector.

The Magistrate or Customs-collector before whom any person is so brought shall, if he see no reasonable ground for search, forthwith discharge such person ; but, if otherwise, shall direct that the search be made.

A female shall not be searched by any but a female.

171. Any duly empowered officer of Customs or other person duly employed for the prevention of smuggling, may stop and search for smuggled goods any vessel, cart or other means of conveyance : Provided that he has reason to believe that smuggled goods are contained therein.

172. Any Magistrate may, on application by a Customs-collector, stating his belief that dutiable or prohibited goods are secreted in any place within the local limits of the jurisdiction of such Magistrate, issue a warrant to search for such goods.

Such warrant shall be executed in the same way, and shall have the same effect, as a search-warrant issued under the law relating to Criminal Procedure.

173. Any person against whom a reasonable suspicion exists that he has been guilty of an offence under this Act may be arrested in any place, either upon land or water, by any officer of Customs or other person duly employed for the prevention of smuggling.

Persons reasonably suspected may be arrested.

Persons arrested to be taken to nearest Magistrate or Customs collector.

174. Every person arrested on the ground that he has been guilty of an offence under this Act shall forthwith be taken before the nearest Magistrate or Customs-collector.

175. When any such person is taken before a Magistrate, such Magistrate may, if he thinks fit, either commit him to gaol or order him to be kept in the custody of the Police for such time as is necessary to enable such Magistrate to communicate with the proper officers of Customs :

Persons taken before Magistrate may be detained or admitted to bail.

Provided that any person so arrested, committed or kept shall be released on giving security to the satisfaction of the Magistrate to appear at such time and place as such Magistrate appoints in this behalf.

176. If any person liable to be arrested under this Act is not arrested at the time of committing the offence for which he is so liable, or after arrest makes his escape, he may at any time afterwards be arrested and taken before a Magistrate, to be dealt with as if he had been arrested at the time of committing such offence.

177. When any person employed on the crew of any of the ships of Her Majesty's Navy, Indian Marine or Marine Survey, is arrested under this Act, the arresting officer shall forthwith give notice thereof to the commanding officer of the ship, who shall thereupon place such person in security on board of such ship, until the arresting officer has obtained a warrant from a Magistrate for bringing up such person to be dealt with according to law.

The Magistrate shall grant such warrant upon complaint made to him by the arresting officer, stating the offence for which the person is detained.

178. Any things liable to confiscation under this Act may be seized in any place, either upon land or water, by any officer of Customs or other person duly employed for the prevention of smuggling.

179. All things seized on the ground that they are liable to confiscation under this Act shall, as soon as conveniently may be, be delivered into the care of any Customs-officer authorized to receive the same.

If there be no such officer at hand, all such things shall be carried to and deposited at the Custom-house nearest to the place of seizure.

If there be no Custom-house within a convenient distance, such things shall be deposited at the nearest place appointed by the [1] Chief Customs-officer [1] for the deposit of things so seized.

180. When any things liable to confiscation under this Act are seized by any Police-officer on suspicion that they have been stolen, he may carry them to any Police-station or Court at which a complaint connected with the stealing or receiving of such things has been made, or an enquiry connected with such stealing or receiving is in progress, and there detain such things until the dismissal of such complaint or the conclusion of such enquiry or of any trial thence resulting.

In every such case the Police-officer seizing the things shall send written notice of their seizure and detention to the nearest Custom-house; and immediately after the dismissal of the complaint or the conclusion of the enquiry or trial, he shall cause such things to be conveyed to, and deposited at, the nearest Custom-house, to be there proceeded against according to law.

Leg. Changes:—[1] The words "Chief Customs-officer" were substituted for "Chief Customs-authority" by Act IV of 1914.

181. When anything is seized, or any person is arrested, under this Act, the officer or other person making such seizure or arrest shall, on demand of the person in charge of the thing so seized, or of the person so arrested, give him a statement in writing of the reason for such seizure or arrest.

When seizure or arrest is made, reason in writing to be given.

182. In every case, except the cases mentioned in section 167, Nos. 26, 72 and 74 to 76, both inclusive, in which, under this Act, anything is liable to confiscation or to increased rates of duty,

Adjudication of confiscations and penalties.

or any person is liable to a penalty,

such confiscation, increased rate of duty or penalty may be adjudged—

- (a) without limit, by a Deputy Commissioner or Deputy Collector of Customs, or a Customs-collector ;
- (b) up to confiscation of goods not exceeding two hundred and fifty rupees in value, and imposition of penalty or increased duty not exceeding one hundred rupees, by an Assistant Commissioner or Assistant Collector of Customs ;
- (c) up to confiscation of goods not exceeding fifty rupees in value, and imposition of penalty or increased duty not exceeding ten rupees, by such other subordinate officers of Customs as the [1] Chief Customs-authority [1] may, from time to time, empower in that behalf in virtue of their office :

Provided that the [1] Chief Customs-authority [1] may, in the case of any officer performing the duties of a Customs-collector, limit his powers to those indicated in clause (b) or in clause (c) of this section, and may confer on any officer, by name or in virtue of his office, the powers indicated in clauses (a), (b) or (c) of this section.

183. Whenever confiscation is authorized by this Act, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit.

Option to pay fine in lieu of confiscation.

184. When anything is confiscated under section 182, such thing shall thereupon vest in Her Majesty.

On confiscation, property to vest in Her Majesty.

The officer adjudging confiscation shall take and hold possession of the thing confiscated, and every officer of Police, on the requisition of such officer, shall assist him in taking and holding such possession.

185. If any vessel actually departs without a port-clearance, or after failing to bring-to when required at any station appointed under section 17, the penalty to which the Master of such vessel is liable may be adjudged by the Chief Customs-officer of any Customs-port to which such vessel proceeds, or in which she is, and, in the case of Aden, by such officer as the Governor of Bombay in Council appoints in this behalf.

Levy of penalty for failure to bring-to.

Leg. Changes:—[1] The words "Chief Customs-authority" were substituted for "Local Government" by Act IV of 1914.

A certificate of such departure or failure to bring to when required, purporting to be signed by the Chief Customs-officer of the Port from which the vessel is stated to have so departed, shall be *prima facie* proof of the fact so certified.

186. The award of any confiscation, penalty or increased rate of duty under this Act by an officer of Customs shall not prevent the infliction of any punishment to which the person affected thereby is liable under any other law.

187. All offences against this Act, other than those cognizable under section 182 by officers of Customs, may be tried summarily by a Magistrate.

188. Any person deeming himself aggrieved by any decision or order passed by an officer of Customs under this Act may, within three months from the date of such decision or order, appeal therefrom to the Chief Customs-authority, or, in such cases as the Local Government directs, to any officer of Customs not inferior in rank to a Customs-collector and empowered in that behalf by name or in virtue of his office by the Local Government.

Such authority or officer may thereupon make such further enquiry and pass such order as he thinks fit, confirming, altering or annulling the decision or order appealed against:

Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation, penalty or rate of duty than has been adjudged against him in the original decision or order.

Every order passed in appeal under this section shall, subject to the power of revision conferred by section 191, be final.

189. Where the decision or order appealed against relates to any duty or penalty leviable in respect of any goods, the owner of such goods, if desirous of appealing against such decision or order, shall, pending the appeal, deposit in the hands of the Customs-collector at the Port where the dispute arises the amount demanded by the officer passing such decision or order.

When delivery of such goods to the owner thereof is withheld merely by reason of such amount not being paid, the Customs-collector shall, upon such deposit being made, cause such goods to be delivered to such owner.

If upon any such appeal it is decided that the whole or any portion of such amount was not leviable in respect of such goods, the Customs-collector shall return such amount or portion (as the case may be) to the owner of such goods on demand by such owner.

190. If, upon consideration of the circumstances under which any penalty, increased rate of duty or confiscation has been adjudged under this Act by an officer of Customs, the Chief Customs-authority is of opinion that such penalty, increased rate or confiscation ought to be remitted in whole or in part, or commuted, such authority may remit the

same or any portion thereof, or may, with the consent of the owner of any goods ordered to be confiscated, commute the order of confiscation to a penalty not exceeding the value of such goods.

191. The Local Government may, on the application of any person aggrieved by any decision or order passed under this Act by any officer of Customs or Chief Customs-authority, and from which no appeal lies, reverse or modify such decision or order.

Revision by Local Government.

Goods on which penalty incurred not to be removed till payment.

Other goods of person liable to fine or penalty may be detained.

192. When any fine, penalty or increased rate of duty is leviable under this Act, the goods in respect of which such fine, penalty or rate is leviable shall not be removed by the owner until such fine, penalty or rate is paid.

If any person has become liable to any such fine, penalty or rate in respect of any goods, the Customs-collector may detain any other goods belonging to such person passing through the Custom-house until such fine, penalty or rate is paid.

193. When a penalty or increased rate of duty is adjudged against any person under this Act by any officer of Customs, such officer, if such penalty or increased rate be not paid, may levy the same by sale of any goods of the said person which may be in his charge, or in the charge of any other officer of Customs.

Enforcement of payment of penalty.

When an officer of Customs who has adjudged a penalty or increased rate of duty against any person under this Act is unable to realize the unpaid amount thereof from such goods, such officer may notify in writing to any Magistrate within the local limits of whose jurisdiction such person or any goods belonging to him may be, the name and residence of the said person and the amount of penalty or increased rate of duty unrecovered; and such Magistrate shall thereupon proceed to enforce payment of the said amount in like manner as if such penalty or increased rate had been a fine inflicted by himself.

CHAPTER XVIII.

MISCELLANEOUS.

Power to open packages and examine goods.

194. Any officer of Customs may open any package, and examine any goods brought by sea to, or shipped or brought for shipment at, any Customs-port.

[1] 195. (1) The Customs-collector may, on the entry or clearance of any goods, or at any time while such goods are being passed through the Custom-house, take samples of such goods, for examination or for ascertaining the value thereof on which duties are payable, or for any other necessary purpose.

Power to take samples of goods.

Leg. Changes :—[1] The original S. 195 was re-numbered S. 195 (1) and sub-S. (2) was added thereto by Act XIII of 1919.

Every such sample shall, if practicable, be at the option of the owner either restored to him, or sold and the proceeds accounted for to him.

(2) In the case of goods which consist of drugs or articles intended for consumption as food, and in respect of which the taking of samples for the purposes of this sub-section may have been authorized by general or special order of the Local Government, the Customs-collector may also in like circumstances take samples thereof for submission to, and examination by, such officer of Government or of a local authority as may be specified in such order. The real value of all such samples shall be paid to the owner by the Customs-collector.

Owner to pay expense incidental to compliance with Customs-law. **196.** The unshipping, carrying, shipping and landing of all goods,

and the bringing of them to the proper place for examination or weighing, and the putting of them into and out of the scales, and the opening, unpacking, bulking, sorting, lotting, marking and numbering of goods, where such operations are necessary or permitted,

and the removing of goods to, and the placing of them in, the proper place of deposit,

shall be performed by or at the expense of the owner of such goods.

197. No owner of goods shall be entitled to claim from any officer of Customs compensation for any loss or damage occurring to such goods at any time while they remain or are lawfully detained in any Custom-house, or on any Custom-house wharf, or under charge of any officer of Customs, unless it be proved that such loss or damage was occasioned by the neglect or wilful act (a) of such officer of Customs.

198. No proceeding other than a suit shall be commenced against any person for anything purporting to be done in pursuance of this Act without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof; or

after the expiration of three months from the accrual of such cause.

199. The [1] Chief Customs-officer [1] may from time to time fix the period after the expiration of which goods left on any Custom-house wharf, or other authorized landing-place or part of the Custom-house premises, shall be subject to payment of fees, and the amount of such fees.

200. A duplicate of any certificate, manifest, bill or other Custom-house document may, on payment of a fee not exceeding ten rupees, be furnished, at the discretion of the Customs-collector, to any person applying for the same, if the Customs-collector is satisfied that no fraud has been committed or is intended by the applicant.

Leg. Changes:—[1] The words "Chief Customs-officer" were substituted for "Chief Customs-authority" by Act IV of 1914.

Case-law:—(a) See 7 M. 42.

201. Except in the cases provided for by sections 36, 55, 63 and 94, the Customs-collector may in his discretion, upon payment of one rupee, authorize any document, after it has been entered and recorded in the Custom-house, to be amended.

202. No person authorized to act as an agent for the transaction of any business relating to the entrance or clearance of any vessel, or the import or export of goods or baggage, shall so act in any Custom-house, unless such authorization is approved by the Customs-collector.

Such officer may require any person so authorized to give a bond with sufficient security, in any sum not exceeding five thousand rupees, for his faithful behaviour as regards the Custom-house regulations and officers.

Such officer may, in case of misbehaviour of the person so authorized, suspend or withdraw such approval, but an appeal against every such suspension or withdrawal shall lie to the Chief Customs-authority, whose decision thereon shall be final.

Every appeal under this section shall be made within one month of the suspension or withdrawal.

203. When any person applies to any officer of Customs for permission to transact any specified business with him on behalf of any other person, such officer may require the applicant to produce a written authority from the person on whose behalf such business is to be transacted, and in default of the production of such authority may refuse such permission.

The clerk, servant or agent of any person or mercantile firm may transact business generally at the Custom-house on behalf of such person or firm: Provided that the Customs-collector may refuse to recognize such clerk, servant or agent unless such person or a member of such firm identifies such clerk, servant or agent to the Customs-collector as empowered to transact such business, and deposits with the Customs-collector an authority in writing duly signed, authorizing such clerk, servant or agent to transact such business on behalf of such person or firm.

204. All rules made under this Act shall be notified in the official Gazette, and shall thereupon have the force of law.

All such rules for the time being in force shall be collected, arranged and published at intervals not exceeding two years, and shall be sold to the public at a reasonable price.

205. [1] * * * *

206. If in any case relating to the removal of goods from a warehouse without payment of duty, the person offending be an officer of Customs not acting in execution of his duty, and be prosecuted to conviction by the owner of such goods, no duty shall be payable in respect of such goods. For any damage so occasioned by such officer,

Leg. Changes:—[1] Section re 'cancellation of notifications' repealed by Act X of 1914.

the [1] Chief Customs-officer or the Customs-collector with the sanction of the Chief Customs-officer shall [1] make due compensation to such owner :

[2] Provided that compensation exceeding Rs. 250 shall be paid with the sanction of the Chief Customs-authority..

Saving of Calcutta
Port Commissioners'
and Bombay Port
Trust Acts.

207. Nothing in this Act shall affect any law for the time being in force relating to the Commissioners for making improvements in the Port of Calcutta or the Trustees of the Port of Bombay [3] or any like body hereafter created for any other port.[3]

SCHEDULE.

PART I.

Acts of the Governor General of India in Council.

Number and year.	Title.	Extent of repeal.
XXI of 1856 ...	An Act to consolidate and amend the law relating to the Abkari Revenue in the Presidency of Fort William in Bengal.	Section 8. Sections 10 to 15, both inclusive, the last sentence of section 16 and the form of bond annexed to the Act.
VI of 1868 ...	An Act to consolidate and amend the laws relating to the administration of the Department of Sea Customs in India.	The whole.
X of 1868 ...	An Act to amend the Consolidated Customs Act.	The whole.
XVII of 1869 ...	An Act to shorten the time for landing cargo	The whole.
XIV of 1871 ...	An Act for the further amendment of the Consolidated Customs Act.	The whole.
VI of 1873 ...	An Act to amend the law relating to the transshipment of goods imported by steamer, and for other purposes.	The whole.
XVI of 1875 ...	An Act to amend the law relating to Customs Duties, and for other purposes.	Sections 5, 6, 7 and 12.

PART II.

FORMS.

A

FORM OF BOND FOR IMPORT-DUTY.

(See section 92.)

BOND.

No.

18 .

We, A. B.,

now of

, and C. D.,

of the same place, are jointly and severally bound to Her Majesty's Secretary of State for India in Council in the sum of

Leg. Changes:—[1] The words "Chief Customs-officer or the Customs-collector with the sanction of the Chief Customs-officer shall" were substituted for "Customs-collector shall, with the sanction of the Chief Customs-authority" by Act IV of 1914. [2] Added by Act IV of 1914. [3] Substituted by Act IX of 1885.

Sea Customs Act VIII of 1878 (SEA CUSTOMS).

Sub.

Government rupees , to be paid to the said Secretary of State in Council, for which payment we jointly and severally bind ourselves and our legal representatives.

(date)

(Signed) ()

The above bounden having applied to the officer in charge of the Custom-house at for and obtained permission to lodge in the warehouse for a period of the following goods, that is to say-- imported by sea from on board of the ship and entered in the Custom-house Books as No. of the Register of Goods imported by Sea ;

The condition of this Bond is that

if the , or their legal representatives, shall observe all the rules prescribed in the Sea Customs Act, 1878, to be observed by owners of goods warehoused, and by persons obtaining permission to warehouse goods under the provisions thereof ;

And if the said , or their legal representatives, shall pay to the officer in charge of the Custom-house at the port of all dues, whether Customs-duties, warehouse-dues, rent or other lawful charges which shall be demandable on the said goods, or on account of penalties incurred in respect to them, within from the date of this Bond, or within such further time as the Chief Customs-authority of shall allow in that behalf, together with interest on every such sum at the rate of six per cent. per annum from the date of demand thereof being made in writing by the said officer in charge of the Custom-house ;

And if, within the term so fixed or enlarged, the said goods, or any portion thereof, having been removed from the said warehouse for the home consumption or re-exportation by sea, the full amount of all Customs-duties, warehouse-dues, rent and other lawful charges, penalties and interest demandable as aforesaid shall have been first paid on the whole of the said goods.

This obligation shall be void.

Otherwise, and on breach of failure in the performance of any part of this condition, the same shall be in full force.

(date)

(Signed) ()

B

FORM OF BONDED WAREHOUSE WARRANT.

(See section 96.)

I do hereby certify that have deposited in the Warehouse of the undermentioned goods , which goods, the engage on demand, after payment of rent and incidental charges and Government dues or customs chargeable thereon, to deliver to the said or their assigns, or the holder of this warrant to whom it may be transferred by endorsement.

C

**FORM OF BOND FOR THE REMOVAL OF SPIRIT FROM A
LICENSED DISTILLERY.***(See sections 144 and 152.)*

We,

are jointly and severally bound to Her Majesty's Secretary of State for India in Council in the sum of Government rupees to be paid to the said Secretary of State in Council, for which payment we jointly and severally bind ourselves and our legal representatives.

Dated this day of 18 .
(Signed) ()

The above bounden being indebted to Her Majesty's Secretary of State for India in Council in the sum of Government rupees, being the amount of duty payable at the rate of rupees per imperial gallon London proof, for gallons of or for gallons of proof spirit used in the preparation of dozens of bottles, or gallons of cordials and liquors, as specified in the annexed schedule) manufactured at which the said have been allowed to remove thence for exportation by sea, subject to the provisions of the Sea Customs Act, 1878, without having paid such duty.

The condition of this obligation is that, if the above bounden , or their legal representatives, shall, at the expiration of four calendar months from the date of this obligation, pay or cause to be paid to the said Secretary of State in Council duty at the rate of rupees per imperial gallon of proof spirit for all or any portion of the above-mentioned which shall not have been then exported by sea to a Foreign Port, subject to the aforesaid provisions (of which exportation, if any, due proof shall be given), or passed for local consumption on payment of duty, then this bond shall be void; otherwise the same shall remain in full force.

Signed in the presence of

Date

*If the bond be for cordials and other liquors under section 152 add—
Schedule.*

Description of cordials and liquors.	Quantity in bottles or gallons.	Quantity of proof spirit.
1	2	3

THE SLAVERY ACT, 1843.

(ACT V OF 1843.)

[Passed on the 7th April, 1843.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1843	V	Slavery	Rep. in pt., Act XVI of 1874.

An Act (a) for declaring and amending the Law regarding the condition of Slavery within the Territories of the East India Company.

1. [1] * * * * No public officer shall, in execution of any decree or order of Court, or for the enforcement of any demand of rent or revenue, sell or cause to be sold any person, or the right to the compulsory labour or services of any person, on the ground that such person is in a state of slavery.

Prohibition of sale of person or right to his labour on ground of slavery.

2. [1] * * * * No rights arising out of an alleged property in the person and services of another as a slave (b) shall be enforced by any Civil or Criminal Court or Magistrate within the territories of the East India Company.

Bar to enforcement of rights arising out of alleged property in person as a slave.

3. [1] * * * * No person who may have acquired property by his own industry, or by the exercise of any art, calling or profession, or by inheritance, assignment, gift or bequest, shall be dispossessed of such property or prevented from taking possession thereof on the ground that such person or that the person from whom the property may have been derived was a slave.

Bar to dispossession of property on ground of owner's slavery(c).

4. [1] * * * * Any Act which would be a penal offence if done to a free man shall be equally an offence if done to any person on the pretext of his being in a condition of slavery.

Penal offence against alleged slave.

Leg. Changes:—[1] Repealed by Act XVI of 1874.

Case-law:—(a) Construction and scope, 3 B. 442=6 I.A. 137=5 C.L.R. 11. (b) Agreement to become slave of a *Guru* illegal, 10 M. 375; as to rights derived from slave girl subsequently emancipated, see 12 B.H.C.R. 156. (c) Effect upon rule of Mahomedan Law, 3 R 422=6 I.A. 137=5 C.L.R. 11.

THE STAGE-CARRIAGES ACT, 1861.

(ACT XVI OF 1861.)

[Passed on the 7th July, 1861.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1861	XVI	Stage-Carriages	Rep. in pt., Act XIV of 1870. Am., Act XVI of 1876. Rep. in pt. and am., Act I of 1898 ; Act X of 1914.

An Act (a) for licensing and regulating Stage-Carriages.

WHEREAS it is expedient to license and to regulate stage-carriages in British India ; It is enacted as follows :—

1. Every carriage drawn by one or more horses which shall ordinarily be used for the purpose of conveying passengers for hire to or from any place in British India shall, without regard to the form or construction of such carriage, be deemed to be a stage-carriage within the meaning of this Act ;

[1] * * * *

2. No carriage shall be used as a stage-carriage unless licensed by a Magistrate or by the [2] * Commissioner of Police of a Presidency Town.

3. The Magistrate or [2] * Commissioner of Police to whom the application for a license of a stage-carriage is made may refuse to license the same if he shall be of opinion that such stage-carriage is unserviceable or is unsafe or unfit for public accommodation or use.

If a Magistrate or [2] * Commissioner of Police as aforesaid shall grant a license, the license shall set forth the number thereof, the name and residence of the proprietor of the stage-carriage, the place at which his head office is held, the largest number of passengers and the greatest weight of luggage to be carried in or on such carriage, the number of horses by which such carriage is to be drawn, and the name of the place at which such carriage is licensed.

4. [3] For every such license there shall be paid by the proprietor of the stage-carriage the sum of five rupees or such less sum as the Local Government may fix, and such license shall be in force for one year from the date thereof. [3]

When a licensed stage-carriage is transferred to a new proprietor within the year, the name of such new proprietor shall, on application to

Leg. Changes :—[1] Repealed by Act I of 1898. [2] The word "Chief" was repealed by Act X of 1914. [3] Substituted by Act I of 1898.

Case-law :—(a) Scope of Act, Rat. Un. Cr. O. 364 = Cr. Rg. 7 of 1888.

that effect, be substituted in the license for the name of the former proprietor without any further payment for that year; and every person who appears by the license to be the proprietor shall be deemed to be such proprietor for all the purposes of this Act.

5. On any stage-carriage being licensed, the proprietor thereof shall cause the number of the license and all the other particulars of the license to be distinctly painted in the English language and character upon a conspicuous part of such stage-carriage.

Particulars to be printed on conspicuous part of carriage.

Penalty for letting carriage without having particulars painted.

6. The proprietor of any licensed stage-carriage who shall let such stage-carriage for hire without the particulars specified in section 3 being painted on such carriage in the manner directed in the last preceding section shall be liable to a fine not exceeding one hundred rupees.

7. Whoever lets for hire any stage-carriage without the same being licensed as provided by this Act, shall be liable, on a first conviction, to a fine not exceeding one hundred rupees, and on any subsequent conviction, to a fine which may extend to five hundred rupees.

Penalty for letting for hire unlicensed carriage (a).

8. Any proprietor, or agent of a proprietor, or any driver of a licensed stage-carriage, who knowingly permits such carriage to be drawn by a less number of horses, or who knowingly permits a larger number of passengers, or a greater weight of luggage, to be carried by such stage-carriage than shall be provided by the license, shall be liable on a first conviction to a fine not exceeding one hundred rupees, and on any subsequent conviction, to a fine which may extend to five hundred rupees.

Penalty for allowing carriage to be drawn by fewer animals or more passengers, etc., to be carried than provided by license (b).

In every case where such stage-carriage shall be proved to have been drawn by a less number of horses, or to have carried a larger number of passengers or a greater weight of luggage than shall be provided by the license, the proprietor of such carriage shall be held to have knowingly permitted such offence, unless he shall prove that the offence was not committed with his connivance, and that he had taken every reasonable precaution and had made reasonable provision to prevent the commission of the offence.

9. Any person who shall cruelly beat, ill-treat, over-drive, abuse, torture, or cause or procure to be cruelly beaten, ill-treated, over-driven, abused or tortured, any horse employed in drawing or harnessed to any stage-carriage,

Penalty for ill-treating animals (c).

Case-law :—(a) Act not applicable to carriages plying only within a town and its suburbs to which Bom. Act VI of 1863 would apply if extended thereto, Rat. Un. Cr. O. 237 = Cr. Rg. 17 of 1887; all Magistrates have jurisdiction to try offence under section, Rat. Un. Cr. C. 864 = Cr. Rg. 7 of 1888. (b) Running a horse not passed by the police or permitting stage carriages to be drawn by coolies not an offence, A.W.N. (1888) 228; jurisdiction of second class Magistrate to try offence under section, 7 P.R. 1879, Cr. (c) Jurisdiction of all Magistrates to try offences under the section, Rat. Un. Cr. C. 864 = Cr. Rg. 7 of 1888; of second class Magistrates, 7 P.R. 1879, Cr.; whether or not horse used in stage-carriage over-driven, a question of fact, A.W.N. (1897) 27.

S. 13 **ACT XVI OF 1861 (STAGE-CARRIAGES). Stage-Carriages**

or who shall harness to or drive in any stage-carriage any horse which from sickness, age, wounds, or other cause is unfit to be driven in such stage-carriage, shall for every such offence be liable to a fine not exceeding one hundred rupees.

10. Any Magistrate or [1] * Commissioner of Police within the local limits of whose jurisdiction any stage-carriage shall ply, or who has granted the license of any stage-carriage, may cancel the license of such stage-carriage, if it shall appear to him that such stage-carriage or any horse ^(a) or any harness used with such carriage is unserviceable or unsafe or otherwise unfit for public accommodation or use.

Revocation of license.

11. In any station or place in which a Magistrate shall reside and be, any Police-officer may, in any place within two miles of the office of such Magistrate, seize any stage-carriage with the horse harnessed thereto, if the full particulars of the license of such stage-carriage be not distinctly painted on such stage-carriage in the manner provided in section 5 of this Act.

Penalty for not conforming to provisions of section 5.

Such carriage with the horse harnessed thereto shall be taken without delay by such Police-officer before such Magistrate, who shall forthwith proceed to hear and determine the complaint of such Police-officer; and, if thereupon any fine is imposed by such Magistrate and such fine is paid, such stage-carriage and horse shall be immediately released; and if such fine be not paid, such stage-carriage and horse may be detained for twenty days as security for the payment thereof; and if the fine be not sooner paid, they may be sold and the proceeds applied (so far as they extend) to the payment of the said fine, and all costs and charges incurred on account of the detention and sale; and the surplus (if any), when claimed, shall be paid to the proprietor of such carriage and horse; and if such surplus be not claimed within a further period of two months from such sale, the same shall be forfeited to the State.

If the proceeds of such sale do not fully pay the fine and costs and charges aforesaid, the balance may be recovered as hereinafter provided.

12. If any driver of any stage-carriage, or any other person having the care thereof, shall, through intoxication, neglect, or by wanton or furious driving, or by any other misconduct, endanger the safety of any passenger or other person, or shall injure or endanger the property of the proprietor of such stage-carriage or of any other person, every such person so offending shall be liable to a fine not exceeding one hundred rupees.

Penalty for misconduct on part of drivers.

13. Whenever the driver of any stage-carriage or the owner of any horse employed in drawing any stage-carriage shall have committed any offence against this Act for the commission whereof any penalty is by this Act imposed, other than an offence specified in section 8,

Penalty recoverable when from proprietor.

Leg. Changes:—[1] The word "Chief" was repealed by Act X of 1914.

Case-law:—(a) Owner driving horse and rules framed under the Act, A.W.N. (1897) 27.

and such driver or owner shall not be known, or being known cannot be found, or if the penalty cannot be recovered from such driver or owner, the proprietor of such carriage shall be liable to every such penalty as if he had been the driver of such carriage or owner of such horse at the time when such offence was committed :

Provided that if any such proprietor shall make out, to the satisfaction of the Magistrate before whom any complaint or information shall be heard, by sufficient evidence, that the offence was committed by such driver or owner without the privity or knowledge of such proprietor, and that no profit, advantage, or benefit, either directly or indirectly, has accrued or can accrue to such proprietor therefrom, and that he has used his endeavour to find out such driver or owner, and has done all that was in his power to recover the amount of the penalty from him, the Magistrate may discharge the proprietor from such penalty, and shall levy the same upon such driver or owner when found.

14. Whenever any charge is made before any Magistrate of any offence under this Act on which it is necessary to issue a summons to the proprietor of a stage-carriage, the Magistrate shall issue such summons directed to such proprietor or his nearest agent, and may transmit such summons by letter-post, which shall be deemed to be good service thereof.

The letter shall be registered at the post office, and the cost of the registration shall be borne by the Government in the first instance, but may be charged as costs in the case.

The summons shall allow a reasonable time, in reference to the distance to which the summons is sent, for the appearance of such proprietor or his agent as aforesaid.

15. All penalties incurred under this Act shall be adjudged by a Magistrate or [1] * Commissioner of Police as aforesaid, and all orders made under this Act by such Magistrate or [1] * Commissioner of Police shall be final.

16. All penalties imposed under this Act, or any balance of any fine, costs, or charges as mentioned in section 11 of this Act, may in case of non-payment or non-recovery thereof be levied by distress and sale of the moveable property of the offender by warrant under the hand of the Magistrate who imposed the same.

17. In case any such penalties shall not be forthwith paid, such Magistrate may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such Magistrate for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

18. If upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such penalty, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such Magistrate by the confession of the offender or otherwise that he has not sufficient goods and chattels whereupon such penalty could be levied if warrant of distress were issued, such Magistrate may, by warrant under his hand, commit the offender, provided he is not a European British subject, to prison, there to be imprisoned, according to the discretion of such officer, for any term not exceeding two calendar months when the amount of penalty shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

19. If the offender shall be a European British subject, the Magistrate shall record the facts and transmit such record to the District Court of the district wherein the offender is convicted, and the amount of penalty and the costs (if any) shall be levied in the manner provided for the execution of decrees of the Civil Court.

20. On complaint made before any Magistrate of any offence committed under this Act, it shall not be necessary to prove that the offence was committed within the local limits of such Magistrate or other officer.

[1] 20-A. (1) The Local Government may, by notification in the official Gazette, make rules ^(a) to carry out the purposes and objects of this Act in the territories under its administration or any part of the said territories.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe forms for licenses under this Act, the sums payable for the same and the conditions on which they may be granted, and the cases in which they may be revoked ;

(b) provide for the inspection of stage-carriages, and of the animals employed in drawing them : and

(c) regulate the number and length of the stages for which animals may be driven in stage-carriages, and the manner in which they shall be harnessed and yoked.

(3) In making any rule under this section, the Local Government may direct that a breach thereof shall be punishable with fine which may extend to one hundred rupees.

21. The term "Magistrate" ^(b) in this Act shall include all Magistrates and other persons exercising the powers of a Magistrate.

Leg. Changes :—[1] Inserted by Act I of 1898.

Case-law :—(a) Rules framed under the Act, A.W.N. (1897) 27 ; see Rat. Un. Cr. C. 364. (b) Rat. Un. Cr. C. 364 = Cr. Rg. 7 of 1898.

The term "British India" in this Act shall denote the territories that are or shall be vested in Her Majesty by the Statute 21 and 22 Vict., c. 106, entitled "An Act for the better Government of India."

[1] All expressions and provisions which in this Act are applied to horses shall also apply to all other animals employed in drawing any carriage ordinarily used for the purpose of conveying passengers for hire to or from any place in British India.

Act applicable to all animals used for drawing carriages.

Number, Gender.

[2]

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[3] 22. This Act, as amended by subsequent Acts, extends to the whole of British India; but it shall not apply to carriages ordinarily plying for hire within the limits of any municipality or cantonment or other place in which any law for the regulation of carriages is for the time being in force.

Extent of Act.

Power to Local Government to exempt.

[3] 23. The Local Government may, by notification in the official Gazette, exempt any carriages or class of carriages from all or any of the provisions of this Act.

THE INDIAN STAMP ACT, 1899.

(ACT II OF 1899.)

[Passed on the 27th January, 1899.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1858	XIX	Authentication of certain stamped paper	Rep., Act XVIII of 1869.
1858	XLI	Stamp Duties, Bengal	Do.
1869	XVIII	General Stamp Act	Rep., Act I of 1879
N.B.—For further Acts see Sch. II to this Act, <i>infra</i> , and also the Historical Memoir to the Court Fees Act, <i>supra</i> .			
1899	II	Stamp	Amended, Act VI of 1900, XV of 1904, V of 1906, VI of 1910, I of 1912. Amended and Rep. in part, Act X of 1914.

12. (1) (a) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again; and

Cancellation of adhesive stamps.

Leg. Changes:—[1] Substituted by Act XVI of 1876. [2] Repealed by Act X of 1914. [3] Added by Act I of 1899.

(b) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution (4), unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument (b) bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner (e).

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Facts affecting duty to be set forth in instrument (d).

27. The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

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30. Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction or part satisfaction of a debt any moveable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

[1] Any person receiving or taking credit for any premium or consideration for any renewal of any contract of fire-insurance, shall, within one month after receiving or taking credit for such premium or consideration, give a duly stamped receipt for the same.

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33. (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to

Leg. Changes:—[1] Added by Act V of 1906.

Case-law:—(a) If not cancelled—document deemed to be unstamped, 3 A.L.J. 25—28 A. 298; 14 B. 102. (b) *e.g.*, Hundi stamp on which is not cancelled not admissible in evidence, 18 P.R. 1912=65 P.W.R. 1912; 169 P.L.R. 1912. (c) Drawing lines across a stamp is not cancellation in a—, 28 B. 492=6 Bom. L.R. 496; *contra*, 108 P.R. 1908; 15 O.C. 58; but writing one's name across is, 3 A.L.J. 326. (d) See U.B.R. (1892—1896), Vol. I, 303. (e) Refusing or neglecting to give a receipt when required to do so, U.B.R. (1897—1901), Vol. I, 378. (f) Only requisite to prosecution is sanction of Collector and not impounding, U.B.R. (1892—1896), Vol. I, 313; instrument insufficiently stamped admitted in evidence, 16 Cr. L.J. 543; includes bringing under search-warrant, 25 M. 525=2 Weir 870.

ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed :

Provided that—

- (a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 ;
 - (b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.
- (3) For the purposes of this section, in cases of doubt,—
- (a) the Governor General in Council may determine what offices shall be deemed to be public offices ; and
 - (b) the Local Government may determine who shall be deemed to be persons in charge of public offices.

* * * *

35. (a) No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :

Instruments not duly stamped inadmissible in evidence, etc.

Provided that—

- (a) any such instrument not being an instrument chargeable with a duty of one anna [1] or half an anna [1] only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion ;
- (b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty (b) of one rupee by the person tendering it ;

Leg. Changes :—[1] Inserted by Act V of 1906.

Case-law :—(a) Scope, see 12 M. 281—1 Weir 903 ; prohibition in S. 35 does not apply to Criminal proceedings, 16 Cr. L.J. 543. (b) Court should not levy duty of one anna as well as penalty of one rupee, 24 A. 374 = A.W.N. (1902) 72.

- (c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped ;
- (d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 ;
- (e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

* * * * *

38. (1) When the person impounding an instrument under section 33

Instruments impounded how dealt with.

has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 35 or of duty as provided by section 37, he shall send to the

Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector (a).

* * * * *

40. (1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under

Collector's power to stamp instruments impounded.

section 38, sub-section (2), not being an instrument chargeable with a duty of one anna [1] or half an anna [1] only or a bill of exchange or promissory note, he

shall adopt the following procedure :—

- (a) if he is of opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be :
- (b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees ; or, if he thinks fit [2] an amount not exceeding [2] ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees :

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

Leg. Changes :—[1] These words were inserted by S. 9 of Act V of 1906. [2] These words were inserted by S. 6 of Act XV of 1904.

Case-law :—(a) See 25 M. 525 = 2 Weir 670.

(2) Every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) (*) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.

* * * * *

48. All duties, penalties and other sums required to be paid under this Chapter may be recovered by the Collector by distress and sale of the moveable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land-revenue.

* * * * *

61. (1) When any Court in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding, under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898, makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 35, the Court to which appeals lie from, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration.

V of 1898.

Revision of certain decisions of Courts regarding the sufficiency of stamps.

(2) If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under sub-section (2), the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the Stamp-law which the Collector considers him to have committed in respect of such instrument :

Provided that—

(a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under section 35, is paid to the Collector, unless

Case-law:—(a) See 25 M. 525—2 Weir 670; holder of insufficiently stamped instrument, 40 P.R. 1880, Cr.; if there is fraud no action need be taken by the Collector before sanction for prosecution accorded, U.B.R. (1892—1896), Vol. I, 807.

he thinks that the offence was committed with an intention of evading payment of the proper duty ;

- (b) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 42.

CHAPTER VII.

CRIMINAL OFFENCES AND PROCEDURE.

Penalty for executing, etc., instrument not duly stamped.

62. (1) Any person—

- (a) drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting (a) for acceptance or payment, or accepting (b), paying or receiving payment of, or in any manner negotiating, any bill of exchange, cheque or promissory note without the same being duly stamped ; or

- (b) (c) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped ; or

- (c) voting or attempting to vote under any proxy not duly stamped ;

shall for every such offence (d) be punishable with fine (e) which may extend to five hundred rupees :

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40 or section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

(2) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees.

Case-law :—(a) Presenting, meaning of, U.B.R. (1892—1896). Vol. I, 312. (b) Accepting, meaning of, U.B.R. (1892—1896), Vol. I, 311, 312; 7 M. 71=1 Weir 903; 32 B. 753; 4 O.C. 168; 30 A. 440=A.W.N. (1895) 108; 12 P.R. 1887, Cr.; 18 P.R. 1895, Cr.; acknowledgment of receipt of debt due by letter, 8 M. 11; 1 M. 929. (c) Entry in creditor's book, A.W.N. (1903) 174; parties signing arbitration award otherwise than as witnesses, see 7 A.L.J. 180=32 A. 198=11 Cr. L.J. 52=5 Ind. Cas. 180; memo of mortgage transaction in mortgagee's account not so, 31 P.R. 1889, Cr.; amal-dustak not requiring stamp, so conviction set aside, 20 C.W.N. 923=1 Pat. L.J. 366=17 Cr. L.J. 495=36 Ind. Cas. 175; see, also, 21 C.W.N. 758; unstamped receipts issued by unauthorised gomastha, 8 C.W.N. 378; memo given as voucher for money received by one servant for another need not be stamped, 18 Cr. L.J. 968=42 Ind. Cas. 318; receiving unstamped *Khata*, 27 C. 324. (d) Offence under, U.B.R. (1897—1901), Vol. I, 380; gist, A.W.N. (1883) 239; mere receipt of unstamped instruments not constituting abetment of offence, 1 N.L.R. 163; U.B.R. 1904, 2nd Qr. Stamp 1; A.W.N. (1884) 37; 10 C.P.L.R. Cr. 1; debtor taking unstamped receipts when creditor had no stamp is no abetment, 8 A. 18=A.W.N. (1885) 517; not cancelling stamp affixed to receipt, no offence, 9 A. 210. (e) Amount of fine, A.W.N. (1885) 30.

Penalty for failure to cancel adhesive stamp.

63. (a) Any person required by section 12 to cancel an adhesive stamp and failing to cancel such stamp in manner prescribed by that section, shall be punishable with fine which may extend to one hundred rupees.

Penalty for omission to comply with provisions of section 27.

64. (b) Any person who, with intent to defraud the Government,—

- (a) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth (c) ; or,
- (b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances ; or
- (c) does any other act (d) calculated to deprive the Government of any duty or penalty under this Act ;

shall be punishable with fine which may extend to five thousand rupees.

Penalty for refusal to give receipt and for devices to evade duty on receipts.

65. (e) Any person who,—

- (a) being required under section 30 to give a receipt (f) , refuses or neglects to give the same ; or,
- (b) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered ;

shall be punishable with fine which may extend to one hundred rupees.

Penalty for not making out policy or making one not duly stamped.

66. Any person who—

- (a) receives, or takes credit for, any premium or consideration for any contract of insurance and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance ; or
- (b) makes, executes or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or

Case-law :—(a) Each of several items acknowledging receipt of over Rs. 20 in a sarkhat to be stamped, 11 A.L.J. 309=35 A. 390=14 Cr. L.J. 392=20 Ind. Cas. 216 ; 1 Weir 901. (b) Scope, 1 Weir 901. (c) Non-disclosure of certain facts, liability for, 32 A. 171=11 Cr. L.J. 204=7 A.L.J. 110. (d) Meaning of, 24 C.L.J. 441=21 C.W.N. 248=17 Cr. L.J. 466=36 Ind. Cas. 146=44 O. 321 ; see, also, A.W.N. (1903), 173. (e) Conditions to bring instrument under section, A.W.N. (1884) 164 ; offence under, and prosecution without Collector's sanction, 31 P.R. 1915, Cr.=38 P. W.R. 1915, Cr.=16 Cr. L.J. 787=31 Ind. Cas. 643. (f) Proof of demand of stamped receipt, 27 C. 324=4 C.W.N. 440 ; memo by person that a third person has received money not a receipt, 23 B. 54 ; refusing or neglecting to give a receipt, when required to do so, U.B.R. (1897—1901) Vol. I, 378 ; refusal to give a second receipt, 34 A. 192=13 Ind. Cas. 778=9 A.L.J. 97=13 Cr. L.J. 122 ; failure to give receipt when demanded, 1 Weir 906=2 Weir 326.

allow in account, any money upon, or in respect of, any such policy ;

shall be punishable with fine which may extend to two hundred rupees.

67. Any person drawing or executing a bill of exchange or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punishable with fine which may extend to one thousand rupees.

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

Penalty for post-dating bills, and for other devices to defraud the revenue.

68.(a) Any person who—

- (a) with intent (b) to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made ; or,
- (b) knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same ; or,
- (c) with the like intent, practises or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force ;

shall be punishable with fine which may extend to one thousand rupees.

Penalty for breach of rule relating to sale of stamps and for unauthorized sale.

69. (a) Any person appointed to sell stamps who disobeys any rule made under section 74 ; and

- (b) any person not so appointed who sells (c) or offers for sale any stamp (other than a one-anna [1] or half an anna [1] adhesive stamp) ;

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

70. (1) No prosecution in respect of any offence punishable under this Act or any Act hereby repealed shall be instituted without the sanction (d) of the Collector or such other officer (e) as the Local Government generally, or the Collector specially, authorises in that behalf.

Institution and conduct of prosecution.

Leg. Changes :—[1] Inserted by Act V of 1906.

Case-law :—(a) Scoops, 9 M. 138. (b) Is essential, 16 C. 432 ; see 1 Weir 907=23 M. 155 ; 21 C.W.N. 758. (c) Includes a thief selling stolen stamps, 24 M. 319=1 Weir 725 ; selling stamps without license, Rat. Un. Cr. C. 317. (d) Necessary before prosecution, see 9 B. 27 ; 21 P.R. 1915, Cr. U.B.R. (1892—1896), Vol. I, 307 ; 9 A. 210=A.W.N. (1887) 5 ; 2 N.W.P. 188 ; A.W.N. (1883) 98 ; 24 W.R. Cr. 1. (e) Memorandum of sanction not complaint, 5 B.H.C. Cr. C. 48 ; need not make formal enquiry before sanction, 7 M. 537 ; cannot try as Magistrate, 3 C. 622=2 C.L.R. 179 ; 2 A. 806 ; 24 W.R. Cr. 1.

(2) The Chief Controlling Revenue-authority, or any officer generally or specially authorised by it in this behalf, may stay any such prosecution or compound any such offence.

(3) The amount of any such composition shall be recoverable in the manner provided by section 48.

71. No Magistrate (a) other than a Presidency Magistrate or a Magistrate whose powers are not less than those of a Magistrate of the second class, shall try any offence under this Act.

Jurisdiction of Magistrates.

72. Every such offence committed in respect of any instrument may be tried in any district or presidency-town in which such instrument is found as well as in any district or presidency-town in which such offence might be tried under the Code of Criminal Procedure for the time being in force.

Place of trial.

CHAPTER VIII.

SUPPLEMENTAL PROVISIONS.

73. Every public officer having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person authorized in writing by the Collector to inspect for such purpose the registers, books, papers, documents and proceedings, and to take such notes and extracts as he may deem necessary, without fee or charge.

Books, etc., to be open to inspection.

74. The Local Government, subject to the control of the Governor General in Council, may make rules of stamps—

Powers to make rules relating to sale of stamps.

- (a) the supply and sale of stamps and stamped papers ;
- (b) the persons by whom alone such sale is to be conducted : and
- (c) the duties and remuneration of such persons :

Provided that such rules shall not restrict the sale of one-anna [1] or half an anna [1] adhesive stamps.

75. The Governor General in Council may make rules to carry out generally the purposes of this Act, and may by such rules prescribe the fines, which shall in no case exceed five hundred rupees, to be incurred on breach thereof.

Powers to make rules generally to carry out Act.

76. (1) All rules made under this Act, other than rules made under section 74 shall be published in the Gazette of India, and all rules made under section 74 shall be published in the local Gazette.

Publication of rules.

(2) All rules published as required by this section shall, upon such publication, have effect as if enacted by this Act.

Leg. Changes:—[1] Inserted by Act V of 1906.

Case law:—(a) Magistrate authorised by Collector to prosecute cannot try, 3 C. 632; Collector sanctioning cannot try as Magistrate, 2 A. 806; 24 W.R. Cr. 1; judgment, 24 W.R. Cr. 1.

Delegation of certain powers.

[1] 76-A. The Local Government may, by notification in the local official Gazette, delegate—

- (a) all or any of the powers conferred on it by sections 2 (9), 33 (3) (b), 70 (1), 74 and 78 to the Chief Controlling Revenue-authority; and
- (b) all or any of the powers conferred on the Chief Controlling Revenue-authority by sections 45 (1), (2), 56 (1) and 70 (2) to such subordinate Revenue-authority as may be specified in the notification.

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THE STATE OFFENCES ACT, 1857.

(ACT XI OF 1857.)

[Passed on the 30th May, 1857.]

HISTORICAL MEMOIR.

Year.	No. of Act	Name of Act.	How affected.
1857	XI	State Offences	... Rep. in pt., Act XVII of 1862 and Act XII of 1876.

An Act for the prevention, trial, and punishment of offences against the State.

WHEREAS it is necessary to make due provision for the prevention, trial and punishment of offences against the State^(a);
Preamble. It is enacted as follows:—

1. [Punishment for rebellion or for waging war against the Government.] Rep. by Act XVII of 1862.

2. [Punishment for harbouring or concealing offenders.] Rep. by Act XVII of 1862.

3. Clause 1.—Whenever the Executive Government of any Presidency or place [2] * * * * shall proclaim that any District subject to its Government is or has been in a state of rebellion, it shall be lawful for such Government to issue a commission for the trial of all persons who shall be charged with having committed within such District, after a day to be specified in the commission, [2] * * * * crime against the State, or murder, arson, robbery, or other heinous crime against person or property.

Executive Government may issue a commission for the trial of persons charged with certain offences in any proclaimed District.

Leg. Changes:—[1] Inserted by Act IV of 1914. [2] Repealed by Act XII of 1876.

Case-law:—(a) Abetting the waging of war against the sovereign and forfeiture, 17 W.R. 80=8 B.L.R. 83.

State Prisoners ACT XXXIV OF 1850 (STATE PRISONERS).

Clause 2.—The Commissioner or commissioners authorized by any such commission may hold, Court in any part of the said District mentioned in the commission, and may there try any person for any of the said crimes committed within any part thereof; it being the intention of this Act, that the District mentioned in the commission shall, for the purpose of trial and punishment of any of the said offences, be deemed one District.

4. It shall be lawful for the Executive Government, by such commission, to direct that any Court held under the commission shall have power, without^[1] * * * * * the assistance of Assessors, to pass upon every person convicted before the Court of any of the aforesaid crimes any sentence warranted by law for such crime; and that the judgment of such Court shall be final and conclusive; and that the said Court shall not be subordinate to the Sudder Court.

5. If a commission be issued under the authority of this Act, any Magistrate within the District which is described in the commission may commit persons charged with any of the aforesaid crimes within such District for trial before a Court to be held under this Act.

6. Nothing in this Act shall extend to the trial or punishment of any of Her Majesty's natural-born subjects born in Europe, or of the children of such subjects.

7 to 10. [*Possession, etc., of arms.*] *Rep. by the Repealing Act, 1876 (XII of 1876).*

11. The word "Magistrate" in this Act shall include any person^[1] * * * * * specially authorized by the Executive Government to exercise the powers vested in a Magistrate by this Act.

Interpretation-
clause.

THE STATE PRISONERS ACT, 1850.

(ACT XXXIV OF 1850.)

[*Passed on the 23rd August, 1850.*]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1850	XXXIV	State Prisoners ...	Rep. in pt., Act XII of 1891.

Leg. Changes:—[1] Repealed by Act XII of 1876.

ACT III OF 1858 (STATE PRISONERS). **State Prisoners**

An Act for the better Custody of State Prisoners.

WHEREAS doubts have been entertained whether State prisoners confined under Regulation III, 1818, of the Bengal Ben. Reg. III Code (a) can be lawfully detained in any fortress, jail of 1818. or other place within the limits of jurisdiction of any of the Supreme Courts of Judicature established by Royal Charter, and it is expedient that such doubts be removed, and the powers of the said Regulation extended to all the territories under the Government of the East India Company; It is enacted as follows:—

1. The warrant of commitment of any State prisoner, under Regulation III, 1818, of the Bengal Code, may be directed Ben. Reg. III of 1818. to the sheriff of the jail of any of the Supreme Courts of Judicature established by Royal Charter in the said territories, or to the commandant of any fortress, or to the officer in charge of any jail or other place, in which it is deemed expedient that such State prisoner be confined, in any part of the said territories; and such warrant shall be sufficient authority for the detention of such State prisoner in the fortress, jail or other place mentioned in the warrant.

2. Regulation III, 1818, of the Bengal Code, shall be extended and applied to every sheriff, commandant or officer having Ben. Reg. III of 1818. any State prisoner in custody under the said Regulation, as explained and extended by this Act.

3. [Confinement of State prisoners legalized.] Rep. by the Repealing and Amending Act, 1891 (XII of 1891).

THE STATE PRISONERS ACT, 1858.

(ACT III OF 1858.)

[Passed on the 23rd January, 1858.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1858	III	State Prisoners	Rep. in pt., Act XIV of 1870. " Act XII of 1891.

An Act to amend the Law relating to the arrest and detention of State Prisoners.

WHEREAS doubts have been entertained whether State prisoners confined under Regulation II, 1819, of the Mad. Reg. II of 1819. Preamble. Madras Code, or Regulation XXV, 1827, of the Bom. Reg. Bombay Code, can be lawfully detained in any fortress, jail or other place XXV of 1827.

Case-law :—(a) Effect of Reg. III of 1818 on Act XXXIV of 1850, 1 B. 355; 6 B. L. R. 392.

Ben. Reg. III of 1818. within the local limits of the jurisdiction of the Supreme Courts of Judicature at Madras and Bombay, respectively; and it is expedient that such doubts be removed, and that the powers of the said Regulations and of Regulation III, 1818, of the Bengal Code, be extended; It is enacted as follows:—

1. [*Repeal of part of section 1, clause first of Bombay Regulation XXV of 1827.*] *Rep. by the Repealing Act, 1876 (XIV of 1870).*

Ben. Reg. III of 1818. Mad. Reg. II of 1819. Bom. Reg. XXV of 1827. 2. The provisions of Regulation III, 1818, of the Bengal Code, Regulation II, 1819, of the Madras Code, and Regulation XXV, 1827, of the Bombay Code as altered by section 1 of this Act, relating to the arrest and confinement of persons as State prisoners, shall be in force within the local limits of the jurisdiction of the Supreme Courts of Judicature at Calcutta, Madras and Bombay, respectively.

XXXIV of 1950. 3. All powers for the better custody of State prisoners which by virtue of Act XXXIV of 1850 are vested in the Governor General in Council, shall be possessed and may be exercised by the Governor in Council of Fort St. George and the Governor in Council of Bombay respectively, for the better custody of State prisoners arrested within their respective presidencies.

4. [*Arrests, etc., made before the passing of this Act legalized.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

5. The Governor General in Council may order the removal of any State prisoner, confined under the provisions of any of the said Regulations as amended and extended by this Act, from any fortress, jail or place in which he may be confined within either of the said presidencies, to any other fortress, jail or place of confinement within the territories [1] * * * under the Government of [1] * * * India.

THE INDIAN STEAM-SHIPS ACT, 1884.

(ACT VII OF 1884.)

[*Passed on the 29th February, 1884.*]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1884	VII	Steam-ships	Am., Act XII of 1891. " Act I of 1909. " Act X of 1914.

Leg. Changes:—[1] Repealed by Act XII of 1891.

Case-law:—(a) Scope of Act, 6 B.L.R. 392.

An Act to amend the law relating to the Survey of Steam-ships and the grant of Certificates to Engineers of those Ships.

WHEREAS it is expedient to amend the law relating to the survey of steam-ships and the grant of certificates to engineers of those ships; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title. 1. (1) This Act may be called the Indian Steam-ships Act, 1884; and

Extent. (2) It extends to the whole of British India.

2. (1) This Act shall come into force on such day as the Governor General in Council, by notification in the Gazette of India, appoints :

(2) [*Rep. by the Repealing and Amending Act, 1891 (XII of 1891.)*]

Definitions. 3. In this Act, unless there is something repugnant in the subject or context,—

(1) "steam-ship" means every description of vessel used in navigation and propelled wholly or in part by the agency of steam :

(2) "British steam-ship" includes a steam-ship registered under Act XIX of 1838, Act X of 1841 or Act XI of 1850, or under any other law passed by the Governor General in Council and for the time being in force for the registration of ships in India :

(3) "master" means any person (except a pilot or harbour-master) having for the time being control or charge of a steam-ship :

(4) "passenger" includes any person carried in a steam-ship other than the master and crew and the owner, his family and servants : and

(5) "prescribed" means prescribed by a rule made by the Local Government under this Act.

CHAPTER II.

SURVEY OF STEAM-SHIPS.

4. [1] No steam-ship shall carry more than twelve passengers between places in British India or to or from any place in British India from or to any place out of British India, unless she has a certificate of survey under this Act in force and applicable to the voyage on which she is about to proceed, or the service on which she is about to be employed [1].

Exception of certain steam-ships. 5. Nothing in the last foregoing section shall apply to—

(a) any steam-ship having a certificate of survey granted by the Board of Trade or any British Colonial Government, unless

Leg. Changes :—[1] Substituted by Act I of 1909.

it appears from the certificate that it is inapplicable to the voyage on which the steam-ship is about to proceed, or the service on which she is about to be employed, or unless there is reason to believe that the steam-ship has, since the grant of the certificate, sustained injury or damage, or been found unseaworthy or otherwise inefficient ; or

- (b) any steam-ship having a certificate of survey granted under the Inland Steam-vessels Act, 1884, in force and applicable to the voyage on which the steam-ship is about to proceed, or the service on which she is about to be employed ; or
- (c) any steam-ship belonging to, or in the service of, Her Majesty or the Government of India ; or
- (d) any steam-ship belonging to any foreign Prince or State when employed mainly on the public service of the Prince or State ; or
- (e) any steam-ship carrying passengers during the interval between the time at which her certificate of survey under this Act expires and the time at which it is first practicable to have the certificate renewed.

Penalty for carrying passengers without certificate of survey.

6. (1) If any steam-ship carries or attempts to carry passengers in contravention of section 4, the owner and master of the steam-ship shall each be liable to a fine which may extend to one thousand rupees.

(2) If the master or any other officer of any steam-ship which carries or attempts to carry passengers in contravention of section 4 is a licensed pilot, he shall be liable to have his license as a pilot cancelled or suspended for any period by the Local Government, as the Local Government sees fit to order.

7. No officer of Customs shall grant a port-clearance, nor shall any pilot be assigned, to any steam-ship for which a certificate of survey is required by section 4, until after the production by the owner or master thereof of a certificate under this Act in force and applicable to the voyage on which she is about to proceed and the service on which she is about to be employed.

Power to detain steam-ship not having certificate of survey.

8. If any steam-ship for which a certificate of survey is required by section 4 leaves or attempts to leave any port of survey without a certificate, any officer of Customs or any pilot on board the steam-ship may detain her until she obtains a certificate.

9. (1) The Local Government may, from time to time, appoint so many persons as it thinks fit to be surveyors for the purposes of this Act at such ports within the territories under its administration as it, from time to time, appoints to be ports of survey.

(2) [1] * * *

Leg. Changes :—[1] Repealed by Act X of 1914.

(2) Every surveyor appointed under this Act shall, for the purposes of any survey made by him, be deemed to be a public servant within the meaning of the Indian Penal Code.

XLV of 1860.

10. (1) For the purposes of a survey under this Act, any surveyor appointed under this Act may, at any reasonable time, go on board a steam-ship, and may inspect the steam-ship and every part thereof, and the machinery, equipments or articles on board thereof :

Provided that he does not unnecessarily hinder the loading or unloading of the steam-ship, or unnecessarily detain or delay her from proceeding on any voyage.

(2) The owner, master and officers of the steam-ship shall afford to the surveyor all reasonable facilities for a survey, and all such information respecting the steam-ship and her machinery and equipments, or any part thereof, respectively, as he reasonably requires.

10-A. Before a survey under this Act is commenced, the owner or master of the steam-ship to be surveyed shall pay to such officer as the Local Government, from time to time, appoints in this behalf—

Fees in respect of surveys.

- (a) a fee calculated on the tonnage of the steam-ship according to the rates in the schedule hereto annexed or according to any other prescribed rates ; and
- (b) when the survey is to be made in any port of survey other than Calcutta, Madras, Bombay or Rangoon, such additional fee, in respect of the expense (if any) of the journey of the surveyor to the port, as the Local Government, from time to time, by notification in the official Gazette, directs.

11. When a survey under this Act is completed, the surveyor making it shall forthwith, if satisfied that he can with propriety do so, give to the owner or master of the steam-ship surveyed a declaration in the prescribed form containing the following particulars, namely :—

Declaration of surveyor.

- (a) that the hull and machinery of the steam-ship are sufficient for the service intended and in good condition ;
- (b) that the equipments of the steam-ship and the certificates of the master, mate or mates, and engineer or engineers or engine-driver, are such and in such condition as are required by any law for the time being in force and applicable to the steam-ship ;
- (c) the time (if less than one year) for which the hull, machinery and equipments of the steam-ship will be sufficient ;
- (d) the limit (if any) beyond which, as regards the hull, machinery or equipments, the steam-ship is in the surveyor's judgment not fit to ply ;
- (e) the number of passengers which the steam-ship is, in the judgment of the surveyor, fit to carry, distinguishing, if necessary, between the respective numbers to be carried on the deck and in the cabins and in different parts of the deck and cabins ;

the number to be subject to such conditions and variations, according to the time of year, the nature of the voyage, the cargo carried or other circumstances, as the case requires ; and

(f) any other prescribed particulars.

12. (1) The owner or master to whom a declaration is given under the last foregoing section shall, within fourteen days after the date of the receipt thereof, send the declaration to such officer as the Local Government, from time to time, appoints in this behalf.

(2) If he fails to do so, he shall forfeit a sum not exceeding five rupees for every day during which the sending of the declaration is delayed.

(3) The owner or master shall pay the sum so forfeited on the delivery of the certificate of survey * * *

13. (1) Upon receipt of a declaration by the officer appointed in this behalf under the last foregoing section, the Local Government shall, if satisfied that the provisions of this Act have been complied with, cause a certificate in duplicate to be prepared and delivered, through such officer at the port at which the steam-ship was surveyed as the Local Government, from time to time, appoints in this behalf, to the owner or master of the steam-ship surveyed, on his applying and paying the * * * sums (if any) mentioned in this Act as payable on delivery of a certificate.

(2) A certificate granted under this section shall be in such form as the Governor General in Council, from time to time, directs ; shall contain a statement to the effect that the provisions of this Act with respect to the survey of the steam-ship and the transmission of the declaration in respect thereof have been complied with ; and shall set forth—

(a) the particulars concerning the steam-ship which clauses (c), (d) and (e) of section 11 require the declaration by the surveyor to contain ; and

(b) any other prescribed particulars.

(3) When a certificate is ready for delivery under this section, the Local Government shall cause notice thereof to be given by post or otherwise to the owner or master of the steam-ship to which the certificate relates.

(4) The Local Government may, from time to time, delegate, —

(a) with the previous sanction of the Governor General in Council, to any person, by name or as holding an office, the function, assigned to the Local Government by sub-section (1), of granting a certificate of survey under that sub-section ;

(b) of its own authority, to any person, by name or as holding an office, the function, assigned to the Local Government by sub-section (3), of causing notice to be given of a certificate of survey being ready for delivery :

Provided, with respect to clause (a) of this sub-section, that no delegation of the function mentioned in that clause shall be construed to authorise the grant of a certificate of survey by the surveyor who gave the declaration of survey under section 11.

14. [*Fees for certificates of survey.*] *Rep. by the Indian Steam-ships Law Amendment Act, 1890 (III of 1890), S. 18.*

15. (1) The owner or master of every steam-ship for which a certificate of survey has been granted under this Act shall forthwith, on the receipt of the certificate, cause one of the duplicates thereof to be affixed, and kept affixed so long as the certificate remains in force and the steam-ship is in use, on some conspicuous part of the steam-ship where it may be easily read by all persons on board thereof.

(2) If the certificate is not so kept affixed, the owner and master of the steam-ship shall each be liable to a fine which may extend to one hundred rupees.

Term of certificates of survey.

16. A certificate of survey granted under this Act shall not be in force—

- (a) after the expiration of one year from the date thereof; or
- (b) after the expiration of the period, if less than one year, for which the hull, boilers, engines or any of the equipments have been stated in the certificate to be sufficient; or
- (c) after notice has been given, by the Local Government, to the owner or master of the steam-ship to which the certificate relates, that the Local Government has cancelled or suspended it.

Cancellation or suspension of certificate of survey by Local Government.

17. Any certificate of survey granted under this Act may be cancelled or suspended by the Local Government if it has reason to believe—

- (a) that the declaration by the surveyor of the sufficiency and good condition of the hull, boilers, engines or any of the equipments of the steam-ship has been fraudulently or erroneously made; or
- (b) that the certificate has otherwise been issued upon false or erroneous information; or
- (c) that, since the making of the declaration, the hull, boilers, engines or any of the equipments of the steam-ship have sustained any injury, or have otherwise become insufficient.

Power to require delivery of expired or cancelled certificate of survey.

18. (1) The Local Government may require any certificate of survey granted under this Act which has expired, or has been cancelled or suspended, to be delivered up to such person as it, from time to time, directs.

(2) If the owner or master of a steam-ship, without reasonable cause, neglects or refuses to deliver up a certificate as required under this section, he shall be punished with fine which may extend to one hundred rupees.

19. If the Local Government which cancels or suspends a certificate of survey granted under this Act is not the Local Government which or whose delegate granted the certificate, the Local Government cancelling or suspending the certificate shall report the fact of cancellation or suspension, together with the reasons therefor, to the Local Government which or whose delegate granted the certificate.

Report of cancellation or suspension of certain certificates.

20. A survey under this Act shall ordinarily be made by one surveyor, but two surveyors may be employed if the Local Government, by order in writing, so directs, either generally in the case of all steam-ships at any port of survey, or specially in the case of any particular steam-ship or class of steam-ships at any such port.

Power for Local Government to direct that two surveyors be employed.

21. (1) If the surveyor or surveyors making a survey under this Act refuses or refuse to give a declaration under section 11 with regard to any steam-ship, or gives or give a declaration with which the owner or master of the steam-ship surveyed is dissatisfied, the Local Government may, on the application of the owner or master, and the payment by him of such fee, not exceeding twice the amount of the fee for the previous survey, as the Local Government may require, direct two other surveyors appointed under this Act to survey the steam-ship.

Power for Local Government to order a second survey.

(2) The surveyors so directed shall forthwith survey the steam-ship, and may, after the survey, either refuse to give a declaration or give such declaration as under the circumstances seems to them proper; and their decision shall be final.

22. When a survey is made under either of the last two foregoing sections by two surveyors, each of the surveyors making the survey shall perform a prescribed portion of the duties assigned by this Act or the rules made under this Act to a surveyor making a survey.

Division of duties when two surveyors employed.

[1] 23. (1) When a steam-ship requires to be furnished with a certificate of survey under this Act and the Local Government is satisfied, by the production of a certificate of survey attested by a British Consular Officer at the port where the survey was made, that the ship has been officially surveyed at a foreign port, and that the requirements of this Act are proved by that survey to have been substantially complied with, the Local Government may, if it thinks fit, dispense with any further survey of the ship in respect of the requirements so complied with, and give a certificate which shall have the same effect as a certificate given after survey under this Act:

Steam-ships with foreign certificates of survey or certificates of partial survey.

Provided that this sub-section shall not apply in the case of a foreign steam-ship to an official survey at any foreign port with respect to which His Majesty has by Order in Council directed that section 363 of the Merchant Shipping Act, 1894, shall not apply.

(2) When the Local Government has, by notification in the local official Gazette, declared that it is satisfied that an official survey at any foreign port specified in the declaration is such as to prove that the requirements of this Act have been substantially complied with, any person appointed by the Local Government, by name or as holding any office, may exercise the power to dispense with a survey and to give a certificate conferred on the Local Government by sub-section (1) in the case of any steam-ship furnished with a valid certificate of survey granted at such foreign port and duly attested by the British Consular Officer at that port.

(3) The procedure prescribed in sub-section (1) shall be applicable in the case of steam-ships furnished with valid certificates of partial survey including docking certificates, granted by the Board of Trade or any British Colonial Government, as if they were steam-ships furnished with like certificates of survey granted at foreign ports, subject to the modification that the powers of the Local Government under the said sub-section may be exercised by any person appointed by the Local Government, by name or as holding any office in this behalf.

Power for Local
Government to
make rules as to
surveys.

24. (1) The Local Government may make rules to regulate the making of surveys under this Act.

(2) Rules under this section may, among other matters,—

- (a) declare the times and places at which, and the manner in which, surveys are to be made;
- (b) regulate the duties of the surveyor making a survey and, where two surveyors are employed, assign the respective duties of each of the surveyors employed;
- (c) declare the form in which the declarations of surveyors and certificates of survey under this Act are to be framed, and the nature of the particulars which are to be stated therein, respectively; and
- (d) fix the rates according to which the fees payable in respect of surveys are to be calculated in the case of all or any of the ports of survey within the territories under its administration.

25. The Local Government may, from time to time, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, declare that all or any of the provisions of this chapter shall not apply in the case of any specified steam-ship, or class of steam-ships, or shall apply thereto with such modifications as the Local Government prescribes.

Power for Local
Government to
exempt certain
steam-ships.

CHAPTER III.

EXAMINATION AND CERTIFICATES OF ENGINEERS AND ENGINE-DRIVERS.

26. The Local Government may, from time to time, appoint persons for the purpose of examining the qualifications of persons desirous of obtaining certificates of competency as engineers or engine-drivers.

Appointment of
examiners.

27. (1) The Local Government shall grant to every person who is reported by the examiners to possess the necessary qualifications a certificate of competency to the effect that he is competent to act as a first-class engineer or as a second-class engineer, or as an engine-driver, as the case may be :

Grant of engineers' and engine-drivers' certificates of competency.

Provided that the Local Government may, in any case in which it has reason to believe that the report has been unduly made, require, before granting a certificate, a re-examination of the applicant or a further inquiry into his testimonials and character.

(2) Every certificate granted under this section shall be in the prescribed form.

28. Notwithstanding anything contained in the Indian Merchant Shipping Act, 1883, or any other law for the time being in force, the Local Government may at any time, without any formal investigation, suspend or cancel any engine-driver's certificate granted by it under this Act, if, in its opinion, the holder is, or has become, unfit to act as an engine-driver.

V of 1883.

Power for Local Government to cancel engine-drivers' certificates.

29. Every certificate of competency granted under this Act shall be made in duplicate, and one copy shall be delivered to the person entitled to the certificate, and the other shall be kept and recorded in the prescribed manner.

Certificates to be made in duplicate.

30. Whenever an engineer or engine-driver proves to the satisfaction of the Local Government which granted his certificate that he has, without fault on his part, lost or been deprived of it, a copy of the certificate to which, by the record kept as provided by law, he appears to be entitled shall be granted to him, and shall have all the effect of the original.

Copy of certificate to be granted in certain cases.

31. (1) A British steam-ship shall not proceed from any port in British India to any port or place not being either in British India, or on the continent of India, or in the Island of Ceylon, unless she has,—

Steam-ships required to carry first-class and second-class engineers.

(a) if the steam-ship has engines of one hundred nominal horse-power or upwards, as her first and second engineers two certificated engineers, the first possessing a first-class engineer's certificate and the second a second-class engineer's certificate or a certificate of the higher grade, granted under this Act or the Merchant Shipping Acts, 1854 to 1883, or to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869.

(b) if the steam-ship has engines of under one hundred nominal horse-power, as her only or first engineer an engineer possessing a second-class engineer's certificate or a certificate of the higher grade of the nature referred to in clause (a).

17 & 18 Vict.,
c. 104, etc.
33 & 34 Vict.,
c. 11.

(2) A foreign steam-ship having engines of fifty nominal horse-power or upwards shall not carry passengers from any port in British India to any other port in British India, and a British steam-ship having engines of a like horse-power shall not proceed from any port in British India, to any other port in British India, or to any port or place on the continent of India, or in the Island of Ceylon, unless she has, as her only or first engineer, an engineer possessing a second-class engineer's certificate or a certificate of the higher grade of the nature referred to in clause (a) of sub-section (1).

32. (1) On and from such day as the Local Government, by notification in the official Gazette, directs in this behalf, a foreign steam-ship having engines of under fifty nominal horse-power shall not carry passengers from any port within the territories administered by that Local Government to any other port in British India, and a British steam-ship having engines of a like horse-power shall not proceed from any port within those territories to any other port in British India, or to any port or place on the continent of India, or in the Island of Ceylon, unless she has as her engineer a person possessing an engine-driver's certificate granted under this Act or an engineer's certificate of either of the grades referred to in the last foregoing section.

Power for Local Government to require certain steam-ships to carry engine-drivers.

(2) The Local Government may at any time, by a like notification, cancel any notification issued by it under this section.

33. Nothing in section 31 or section 32 shall apply to any steam-ship to which the provisions of the Inland Steam-vessels Act, 1884, are applicable. VI of 1884.

Exemption of inland steam-vessels.

34. (a) If any person who has been engaged to serve in any of the capacities referred to in section 31 or section 32 in any steam-ship to which those sections apply, respectively, proceeds in the steam-ship in that capacity without being at the time entitled to, and possessed of, the certificate required by those sections, and

Penalty for serving, or engaging a person to serve, as engineer or engine-driver without a certificate.

(b) if any person employs any person in any capacity referred to in section 31 or section 32 in any steam-ship to which those sections apply, respectively, without ascertaining that he is at the time entitled to, and possessed of, the certificate required by those sections,

he shall be punished with fine which may extend to five hundred rupees.

35. The provisions of Act I of 1859 (*for the amendment of the law relating to Merchant Seamen*) with respect to the certificates of competency or service of the master and mate contained in section 31 and section 32 of that Act shall apply to certificates of competency granted under this Act in the same manner as if certificates of competency granted to engineers under this Act were specially mentioned and included in those sections.

Production of certificates.

Power for Local Government to make rules as to grant of certificates of competency.

36. The Local Government may make rules to regulate the granting of certificates of competency under this Act, and may by such rules—

- (a) provide for the conduct of the examinations of persons desirous of obtaining certificates of competency as engineers or engine-drivers under this Act ;
- (b) prescribe the qualifications to be respectively required of persons desirous of obtaining first-class engineers' certificates, second-class engineers' certificates and engine-drivers' certificates, respectively ;
- (c) fix the fees to be paid by all applicants for examination ; and
- (d) prescribe the form in which certificates are to be framed, and the manner in which the copy of the certificate which is kept by the Local Government is to be recorded.

CHAPTER IV.

INVESTIGATIONS INTO EXPLOSIONS.

Power to investigate causes of explosions on board steam-ships.

37. (1) Whenever any explosion occurs on board any steam-ship on or near the coasts of British India, the Local Government may, if it thinks fit, direct that an investigation into the cause of the explosion be made by such person or persons as it thinks fit.

XLV of 1860.

(2) The person or persons so directed may enter into and on the steam-ship, with all necessary workmen and labourers, and remove any portion of the steam-ship, or of the machinery thereof, for the purpose of the investigation, and shall report to the Local Government what, in his or their opinion, was the cause of the explosion.

(3) Every person making an investigation under this section shall be deemed to be a public servant within the meaning of the Indian Penal Code.

CHAPTER V.

SUPPLEMENTAL.

38. No Magistrate shall try any offence under this Act unless he is a Presidency Magistrate or a Magistrate whose powers are not less than those of a Magistrate of the first class.

Jurisdiction of Magistrates.

39. If any person commits an offence against this Act, he shall be triable for the offence in any place in which he may be found, or which the Local Government, from time to time, by notification in the official Gazette, directs in this behalf, or in any other place in which he might be tried under any other law for the time being in force.

Place of trial.

40. Where the owner or master of a steam-ship is adjudged under this Act to pay a fine for an offence committed with, or in relation to, that steam-ship, the Court may, in addition to any other power it may have for the

Distress of steam-ship.

purpose of compelling payment of the fine, direct that it be levied by distress and sale of the steam-ship, and the tackle, apparel and furniture thereof or so much thereof as is necessary.

Application of Act to ships propelled by electricity or mechanical power. 41. The provisions of this Act shall apply to ships propelled by electricity or other mechanical power, with such modifications as the Governor-General in Council may prescribe for the purpose of adaptation.

Procedure for making, publication and confirmation of rules. 42. (1) A Local Government making rules under this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made in such manner as the Governor General in Council, from time to time, by notification in the Gazette of India, prescribes.

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(4) The Local Government shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) A rule made under this Act shall not take effect until it has been sanctioned by the Governor General in Council and published in the local official Gazette.

(6) The publication in the Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made and sanctioned.

(7) All powers to make rules conferred by this Act may be exercised from time to time as occasion requires.

THE SCHEDULE.

(See section 10-A.)

RATES OF FEES.

	Tons.	Rs.
For steam-ships of less than	200	40
" " 200 tons and up to	350	50
" " 350 " " "	700	60
" " 700 " " "	1,000	80
" " 1,000 " " "	1,500	100
" " 1,500 " and upwards ...		120

THE SUPREME COURTS' OFFICERS TRADING ACT, 1848.

(ACT XV OF 1848.)

[Passed on the 17th June, 1848.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1848	XV	Supreme Courts' Officers Trading	Rep. in part, Act XII of 1876.

An Act to forbid trading by the officers of the Supreme Courts.

Preamble. FOR the better discharge of their duties by the officers of the undermentioned Courts of Justice; It is enacted as follows:—

1. No officer of any of the Courts of Judicature established by Royal Charter within the territories subject to the Government of the East India Company, or any Court established for the relief of insolvent-debtors within the said territories, shall directly or indirectly by himself, or by any other person or persons on his behalf, accept from any person or persons any gift or reward for any act or behaviour in his office, other than his legal salary and fees and profits of office, or hold any office in any bank or public company, except as hereinafter excepted or carry on or be concerned in any dealings as a banker or trader or as agent, factor or broker either for his own advantage or for the advantage of any other person or persons, except such dealings as it may be part of the duty of any such officer by virtue of his office to carry on.

Prohibition, in case of officers of Supreme Courts, against accepting gifts;

holding certain offices; carrying on dealings.

2. This Act shall not be construed to forbid any officer of any of the said Courts, who is also a practising advocate, attorney, solicitor, or proctor in any of the said Courts, from taking the usual fees and emoluments of advocates, attorneys, solicitors or proctors, nor to apply to any advocate, attorney, solicitor, proctor, sheriff, assignee^(a), receiver or committee, so far as he is held to be in that capacity merely for some purposes an officer of any of the said Courts.

Exemption of officers who are also advocates, etc.

3. This Act shall not be construed to forbid any officer of any of the said Courts' from holding any unpaid office in any society for charitable purposes or for the advancement of knowledge, or for the encouragement of science, art or manufactures.

Holding unpaid office in society.

Case-law:—(a) Effect of, on Official Assignee's claim for commission qua auctioneer, 86 C. 990=4 Ind. Cas. 697.

4. Every officer of any of the said Courts who shall knowingly offend against this Act shall, on conviction thereof, be liable to be punished by deprivation of his office, and also, by the sentence of the Court before which he shall be convicted, may be declared incapable, and in that case shall become incapable, of being appointed to the same or any other office of the same Court, or to serve Her Majesty [1] * * * in the territories under the Government of the East India Company, or in such part of the said territories as shall be specified in the sentence, or in the discretion of the Court may be otherwise punished by fine or fine and imprisonment for his misdemeanour as to the Court shall seem fit, regard being had to the nature of his offence.

THE INDIAN TELEGRAPH ACT, 1885.

(ACT XIII OF 1885.)

[Passed on the 22nd July, 1885.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1854	XXXIV	Electric Telegraphs ...	Rep., Act I of 1876.
1860	VIII	Do. ...	
1876	I	Indian Telegraphs ...	Rep., "Act XIII" of 1885.
1885	XIII	Indian Telegraphs ...	Am., Act XI of 1888. " Act VII of 1914. " Act XIV of 1914.

An Act to amend the law relating to Telegraphs in India.

WHEREAS it is expedient to amend the law relating to telegraphs in India; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title, local extent and commencement.

1. (1) This Act may be called the Indian Telegraph Act, 1885;

[2] (2) It extends to the whole of British India, including the Sonthal Parganas and the Pargana of Spiti, and it applies also to—

(a) all native Indian subjects of His Majesty in any place without and beyond British India,

(b) all other British subjects within the territories of any Native State in India, and

(c) all servants of the King, whether British subjects or not, within the territories of any Native State in India.[2]

(3) It shall come into force on the first day of October, 1885.

Leg. Changes :—[1] Repealed by Act XII of 1876. [2] Substituted by Act VII of 1914.

I of 1876.

Repeal and savings. 2. The Indian Telegraph Act, 1876, is hereby repealed.

But all licenses granted and rules made under that Act or any Act thereby repealed, and now in force, shall, so far as they could be granted or made under this Act, be deemed to have been respectively granted and made hereunder.

Definitions. 3. In this Act, unless there is something repugnant in the subject or context,—

(1) "telegraph" means an electric, galvanic or magnetic telegraph, and includes appliances and apparatus for [1] making, transmitting or receiving [1] telegraphic, telephonic or other communications by means of electricity, galvanism or magnetism :

(2) "telegraph officer" means any person employed either permanently or temporarily in connection with a telegraph established, maintained or worked by the Government or by a person licensed under this Act :

(3) "message" means any communication sent by telegraph, or given to a telegraph officer to be sent by telegraph or to be delivered :

(4) "telegraph line" means a wire or wires used for the purposes of a telegraph, with any casing, coating tube or pipe enclosing the same, and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same :

(5) "post" means a post, pole, standard, stay, strut or other above-ground contrivance for carrying, suspending or supporting a telegraph line :

(6) "telegraph authority" means the Director General of [2] Posts and Telegraphs, [2] and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act :

(7) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund.

PART II.

PRIVILEGES AND POWERS OF THE GOVERNMENT.

Exclusive privilege in respect of telegraphs, and power to grant licenses.

4. (1) Within British India, the Governor General in Council shall have the exclusive privilege of establishing, maintaining and working telegraphs :

Provided that the Governor General in Council may grant a license, on such conditions and in consideration of such payments as he thinks fit, to any person to establish, maintain or work a telegraph within any part of British India.

Leg. Changes :—[1] Substituted by Act VII of 1914. [2] Substituted by Act XIV of 1914.

[1] Provided further that the Governor General in Council may, by rules made under this Act and published in the Gazette of India, permit, subject to such restrictions and conditions as he thinks fit, the establishment, maintenance and working—

- (a) of wireless telegraphs on ships within Indian territorial waters, and
- (b) of telegraphs other than wireless telegraphs within any part of British India.

(2) The Governor General in Council may, by notification in the Gazette of India, delegate to the telegraph authority all or any of his powers under the first proviso to sub-section (1).

The exercise by the telegraph authority of any power so delegated shall be subject to such restrictions and conditions as the Governor General in Council may, by the notification, think fit to impose.[1]

Power for Government to take possession of licensed telegraphs and to order interception of messages

5. (1) On the occurrence of any public emergency, or in the interest of the public safety, the Governor General in Council or a Local Government, or any officer specially authorized in this behalf by the Governor General in Council, may—

- (a) take temporary possession of any telegraph established, maintained or worked by any person licensed under this Act; or
- (b) order that any message or class of messages to or from any person, or class of persons or relating to any particular subject, brought for transmission by, or transmitted or received by, any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government or an officer thereof mentioned in the order.

(2) If any doubt arises as to the existence of a public emergency, or whether any act done under sub-section (1) was in the interest of the public safety, a certificate signed by a Secretary to the Government of India or to the Local Government shall be conclusive proof on the point.

6. Any Railway Company, on being required so to do by the Governor General in Council, shall permit the Government to establish and maintain a telegraph upon any part of the land of the Company, and shall give every reasonable facility for working the same.

Power to establish telegraph on land of Railway Company.

7. (1) The Governor General in Council may, from time to time, by notification in the Gazette of India, make rules consistent with this Act for the conduct of all or any telegraphs established, maintained or worked by the Government or by persons licensed under this Act.

Power to make rules for the conduct of telegraphs.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say:—

- (a) the rates at which, and the other conditions and restrictions subject to which, messages shall be transmitted;

- (b) the precautions to be taken for preventing the improper interception or disclosure of messages ;
- (c) the period for which, and the conditions subject to which, telegrams and other documents belonging to, or being in the custody of, telegraph officers shall be preserved ; and
- (d) the fees to be charged for searching for telegrams or other documents in the custody of any telegraph officer.

(3) When making rules for the conduct of any telegraph established, maintained or worked by any person licensed under this Act, the Governor General in Council may, by the rules, prescribe fines for any breach of the same :

Provided that the fines so prescribed shall not exceed the following limits, namely :—

- (i) when the person licensed under this Act is punishable for the breach, one thousand rupees, and in the case of a continuing breach a further fine of two hundred rupees for every day after the first during the whole or any part of which the breach continues ;
- (ii) when a servant of the person so licensed, or any other person, is punishable for the breach, one-fourth of the amounts specified in clause (i).

8. The Governor General in Council may, at any time, revoke any license granted under section 4, on the breach of any of the conditions therein contained, or in default of payment of any consideration payable thereunder.

9. The Secretary of State for India in Council shall not be responsible for any loss or damage which may occur in consequence of any telegraph officer failing in his duty with respect to the receipt, transmission or delivery of any message ; and no such officer shall be responsible for any such loss or damage unless he causes the same negligently, maliciously or fraudulently.

PART III.

POWER TO PLACE TELEGRAPH LINES AND POSTS.

Power for telegraph authority to place and maintain telegraph lines and posts.

10. The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immovable property :

Provided that—

- (a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the Government, or to be so established or maintained ;
- (b) the Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post ; and,

- (c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and
- (d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

Power to enter on property in order to repair or remove telegraph lines or posts.

11. The telegraph authority may, at any time, for the purpose of examining, repairing, altering or removing any telegraph line or post, enter on the property under, over, along, across, in or upon which the line or post has been placed.

Provisions applicable to property vested in or under the control or management of local authorities.

Power for local authority to give permission under section 10, clause (c), subject to conditions,

12. Any permission given by a local authority under section 10, clause (c), may be given subject to such reasonable conditions as that authority thinks fit to impose, as to the payment of any expenses to which the authority will necessarily be put in consequence of the exercise of the powers conferred by that section, or as to the time or mode of execution of any work, or as to any other thing connected with or relative to any work undertaken by the telegraph authority under those powers.

Power for local authority to require removal or alteration of telegraph line or post.

13. When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property vested in or under the control or management of a local authority, and the local authority, having regard to circumstances which have arisen since the telegraph line or post was so placed, considers it expedient that it should be removed or that its position should be altered, the local authority may require the telegraph authority to remove it or alter its position, as the case may be.

Power to alter position of gas or water pipes or drains.

14. The telegraph authority may, for the purpose of exercising the powers conferred upon it by this Act in respect of any property vested in or under the control or management of a local authority, alter the position thereunder of any pipe (not being a main) for the supply of gas or water, or of any drain (not being a main drain):

Provided that—

- (a) when the telegraph authority desires to alter the position of any such pipe or drain, it shall give reasonable notice of its intention to do so, specifying the time at which it will begin to do so, to the local authority, and, when the pipe or drain is not under the control of the local authority, to the person under whose control the pipe or drain is;

- (b) a local authority, or person receiving notice under clause (a) may send a person to superintend the work, and the telegraph authority shall execute the work to the reasonable satisfaction of the person so sent.

15. (1) If any dispute arises between the telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in section 10, clause (c), or prescribing any condition under section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under section 13, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by such officer as the Local Government may appoint either generally or specially in this behalf.

Disputes between telegraph authority and local authority.

(2) An appeal from the determination of the officer so appointed shall lie to the Local Government; and the order of the Local Government shall be final.

Provisions applicable to other property.

Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.

16. (1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code.

XLV of 1860.

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient, or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority from the person who has received the same.

17. (1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority

Removal or alteration of telegraph line or post on property other than that of a local authority.

under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly :

Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(3) A District Magistrate receiving an application under sub-section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level, or for the alteration of its form ; and the order so made shall be final.

Provisions applicable to all Property.

18. (1) If any tree standing or lying near a telegraph line interrupts, or is likely to interrupt, telegraphic communication, a Magistrate of the first or second class may, on the application of the telegraph authority, cause the tree to be removed or dealt with in such other way as he deems fit.

Removal of trees interrupting telegraphic communication.

(2) When disposing of an application under sub-section (1), the Magistrate shall, in the case of any tree in existence before the telegraph line was placed, award to the persons interested in the tree such compensation as he thinks reasonable, and the award shall be final.

19. Every telegraph line or post placed before the passing of this Act under, over, along, across, in or upon any property, for the purposes of a telegraph established or maintained by the Government, shall be deemed to have been placed in exercise of the powers conferred by, and after observance of all the requirements of, this Act.

Telegraph lines and posts placed before the passing of this Act.

- [1] 19-A. (1) Any person desiring to deal in the legal exercise of a right with any property in such a manner as is likely to cause damage to a telegraph line or post which has been duly placed in accordance with the provisions of this Act, or to interrupt or interfere with telegraphic communication, shall give not less than one month's notice in writing of the intended exercise of such right to the telegraph authority, or to any telegraph officer

Person exercising legal right likely to damage telegraph or interfere with telegraphic communication to give notice.

whom the telegraph authority may empower in this behalf.

Leg. Changes :—[1] Added by Act VII of 1914.

(2) If any such person without having complied with the provisions of sub-section (1) deals with any property in such a manner as is likely to cause damage to any telegraph line or post, or to interrupt or interfere with telegraphic communication, a Magistrate of the first or second class may, on the application of the telegraph authority, order such person to abstain from dealing with such property in such manner for a period not exceeding one month from the date of his order and forthwith to take such action with regard to such property as may be in the opinion of the Magistrate necessary to remedy or prevent such damage, interruption or interference during such period.

(3) A person dealing with any property in the manner referred to in sub-section (1) with the *bona fide* intention of averting imminent danger of personal injury to himself or any other human being shall be deemed to have complied with the provisions of the said sub-section if he gives such notice of the intended exercise of the right as is in the circumstances possible, or where no such previous notice can be given without incurring the imminent danger referred to above, if he forthwith gives notice of the actual exercise of such right to the authority or officer specified in the said sub-section.

[1] 19-B. The Governor General in Council may, by notification in the Gazette of India, confer upon any licensee under section 4, in respect of the extent of his license and subject to any conditions and restrictions which the Governor General in Council may think fit to impose and to the provisions of this Part, all or any of the powers which the telegraph authority possesses under this Part with regard to a telegraph established or maintained by the Government or to be so established or maintained :

Power to confer upon licensee powers of telegraph authority under this Part.

Provided that the notice prescribed in section 19-A shall always be given to the telegraph authority or officer empowered to receive notice under section 19-A (1).

PART IV.

PENALTIES.

[2] 20. (1) If any person establishes, maintains or works a telegraph within British India in contravention of the provisions of section 4 or otherwise than as permitted by rules made under that section, he shall be punished, if the telegraph is a wireless telegraph, with imprisonment which may extend to three years or with fine, or with both, and, in any other case, with a fine which may extend to one thousand rupees.

Establishing, maintaining or working unauthorized telegraph.

V of 1898.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, offences under this section in respect of a wireless telegraph shall, for the purposes of the said Code, be bailable and non-cognizable.

(3) When any person is convicted of an offence punishable under this section, the Court before which he is convicted may direct that the

Leg. Changes :—[1] Added by Act VII of 1914. [2] Substituted by Act VII of 1914.

telegraph in respect of which the offence has been committed, or any part of such telegraph, be forfeited to His Majesty.

[1] 20-A. If the holder of a license granted under section 4 contravenes any condition contained in his license, he shall be punished with fine which may extend to one thousand rupees, and with a further fine which may extend to five hundred rupees for every week during which the breach of the condition continues.

21. If any person, knowing or having reason to believe that a telegraph has been established or is maintained or worked in contravention of this Act, transmits or receives any message by such telegraph, or performs any service incidental thereto, or delivers any message for transmission by such telegraph, or accepts delivery of any message sent thereby, he shall be punished with fine which may extend to fifty rupees.

22. If a Railway Company or an officer of a Railway Company neglects or refuses to comply with the provisions of section 6, it or he shall be punished with fine which may extend to one thousand rupees for every day during which the neglect or refusal continues.

Opposing establishment of telegraphs on railway land.
Intrusion into signal-room, trespass in telegraph office or obstruction.

23. If any person—

- (a) without permission of competent authority, enters the signal-room of a telegraph office of the Government, or of a person licensed under this Act, or
- (b) enters a fenced enclosure round such a telegraph office in contravention of any rule or notice not to do so, or
- (c) refuses to quit such room or enclosure on being requested to do so by any officer or servant employed therein, or
- (d) wilfully obstructs or impedes any such officer or servant in the performance of his duty,

he shall be punished with fine which may extend to five hundred rupees.

24. If any person does any of the acts mentioned in section 23 with the intention of unlawfully learning the contents of any message, or of committing any offence punishable under this Act, he may (in addition to the fine with which he is punishable under section 23) be punished with imprisonment for a term which may extend to one year.

Unlawfully attempting to learn contents of messages.
Intentionally damaging or tampering with telegraphs.

25. If any person, intending—

- (a) to prevent or obstruct the transmission or delivery of any message, or
- (b) to intercept or to acquaint himself with the contents of any message, or

(c) to commit mischief,

damages, removes, tampers with or touches any battery, machinery, telegraph line, post or other thing whatever, being part of or used in or about any telegraph or in the working thereof,

he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

[1] 25-A. If, in any case not provided for by section 25, any person

Injury to or interference with a telegraph line or post.

deals with any property and thereby wilfully or negligently damages any telegraph line or post duly placed on such property in accordance with the provisions of this Act, he shall be liable to pay the telegraph authority such expenses (if any) as may be incurred in making good such damage, and shall also, if the telegraphic communication is by reason of the damage so caused interrupted, be punishable with a fine which may extend to one thousand rupees :

Provided that the provisions of this section shall not apply where such damage or interruption is caused by a person dealing with any property in the legal exercise of a right if he has complied with the provisions of section 19-A.

Telegraph officer or other official making away with or altering, or unlawfully intercepting or disclosing, messages, or divulging purport of signals.

26. If any telegraph officer, or any person, not being a telegraph officer but having official duties connected with any office which is used as a telegraph office,—

(a) wilfully secretes, makes away with or alters any message which he has received for transmission or delivery, or

(b) wilfully and otherwise than in obedience to an order of the Governor General in Council or of a Local Government, or of an officer specially authorized by the Governor General in Council to make the order, omits to transmit, or intercepts or detains, any message or any part thereof, or otherwise than in pursuance of his official duty or in obedience to the direction of a competent Court, discloses the contents or any part of the contents of any message, to any person not entitled to receive the same, or

(c) divulges the purport of any telegraphic signal to any person not entitled to become acquainted with the same,

he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

27. If any telegraph officer transmits by telegraph any message on which the charge prescribed by the Government, or

Telegraph officer fraudulently sending messages without payment.

by a person licensed under this Act, as the case may be, has not been paid, intending thereby to defraud the Government or that person, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

28. If any telegraph officer, or any person not being a telegraph officer but having official duties connected with any office which is used as a telegraph office, is guilty of any act of drunkenness, carelessness or other misconduct whereby the correct transmission or the delivery of any message is impeded or delayed, or if any telegraph officer loiters or delays in the transmission or delivery of any message, he shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

29. If any person transmits or causes to be transmitted by telegraph a message which he knows to be false or fabricated, he shall be punished ^(a) with imprisonment for a term which may extend to three years, or with fine, or with both.

Penalty. **[129-A.** If any person, without due authority,—

(a) makes or issues any document of a nature reasonably calculated to cause it to be believed that the document has been issued by, or under the authority of, the Director-General of [2] Posts and Telegraphs, [2] or

(b) makes on any document any mark in imitation of, or similar to, or purporting to be, any stamp or mark of any Telegraph Office under the Director-General of [2] Posts and Telegraphs, [2] or a mark of a nature reasonably calculated to cause it to be believed that the document so marked has been issued by, or under the authority of, the Director-General of [2] Posts and Telegraphs, [2]

he shall be punished with fine which may extend to fifty rupees.

30. If any person fraudulently retains, or wilfully secretes, makes away with or detains a message which ought to have been delivered to some other person, or, being required by a telegraph officer to deliver up any such message, neglects or refuses to do so, he shall be punished with imprisonment for a term which may extend to two years or with fine, or with both.

31. A telegraph officer shall be deemed a public servant ^(b) within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code, and in the definition of "legal remuneration" contained in the said section 161, the word "Government" shall, for the purposes of this Act, be deemed to include a person licensed under this Act.

Leg. Changes:—[1] Added by Act VII of 1914. [2] Substituted by Act XIV of 1914.

Case-law:—(a) Punishment for attempt to cheat by means of forged telegrams, A.W.N. (1903) 26; no complaint, no prosecution, 7 A.L.J. 618=11 Cr. L.J. 151=6 Ind. Cas. 390. (b) Public servant, trial of, for getting bribe, 16 W.R. 27.

Attempts to commit offences.

32. Whoever attempts ^(a) to commit any offence punishable under this Act shall be punished with the punishment herein provided for the offence.

PART V.

SUPPLEMENTAL PROVISIONS.

33. (1) Whenever it appears to the Local Government that any act causing or likely to cause wrongful damage to any telegraph is repeatedly and maliciously committed in any place, and that the employment of an additional police-force in that place is thereby rendered necessary, the Local Government may send such additional police-force as it thinks fit to the place, and employ the same therein so long as, in the opinion of that Government, the necessity of doing so continues.

Power to employ additional police in places where mischief to telegraphs is repeatedly committed.

(2) The inhabitants of the place shall be charged with the cost of the additional police-force, and the District Magistrate shall, subject to the orders of the Local Government, assess the proportion in which the cost shall be paid by the inhabitants according to his judgment of their respective means.

(3) All moneys payable under sub-section (2) shall be recoverable either under the warrant of a Magistrate by distress and sale of the moveable property of the defaulter within the local limits of his jurisdiction, or by suit in any competent Court.

(4) The Local Government may, by order in writing, define the limits of any place for the purposes of this section.

[1] 34. (1) This Act, in its application to the Presidency-towns, shall be read as if the words "District Magistrate" in section 16, sub-section (1), and section 17, sub-sections (2) and (3), for the words "Magistrate of the first or second class" in section 18, sub-section (1), [2] and section 19-A, sub-section (2), [2] and for the word "Magistrate" in section 18, sub-section (2), there had been enacted the words "Commissioner of Police," and for the words "District Judge", in section 16, sub-sections (3), (4) and (5), the words "Chief Judge of the Court of Small Causes."

(2) Section 16, in its application to the town of Rangoon, shall be read as if for the words "District Judge," wherever they occur in that section, there had been enacted the words "Judge of the Court of Small Causes."

(3) The fee in respect of an application to the Chief Judge of a Presidency Court of Small Causes under sub-section (3) of section 16 shall be the same as would be payable under the Court Fees Act, 1870, in respect of such an application to a District Judge beyond the limits of a Presidency-town, and fees for summonses and other processes in proceedings before the Chief Judge under sub-section (3) or sub-section (4) of that section shall be payable according to the scale set forth in the fourth schedule to the Presidency Small Cause Courts Act, 1882.

VII of 1870.

XV of 1882.

Leg. Changes:—[1] Added by Act XI of 1888. [2] Inserted by Act VII of 1914.

Case law:—(a) Definition of attempt, 7 C. 352; 2 Bom. L.R. 286; 304; 12 Bom. L.R. 21; attempt not necessarily last act of the series, 15 A. 173; 2 Cr.L.J. 788; 2 A.L.J. 718; 1 Cr.L.J. 124; 8 C.W.N. 278; attempt distinguished from preparation and intention, 1 A. 816; 14 A. 88.

**THE TERRITORIAL WATERS JURISDICTION
ACT, 1878 (a).**

(41 & 42 VIC., C. 73.)

[Passed on the 16th August, 1878.]

An Act to regulate the law relating to the Trial of Offences committed on the Sea within a certain distance of the Coasts of Her Majesty's Dominions.

WHEREAS the rightful jurisdiction of Her Majesty, her heirs and successors, extends and has always extended over the open seas adjacent to the coasts of the United Kingdom and of all other Parts of Her Majesty's dominions to such a distance as is necessary for the defence and security of such dominions :

And whereas it is expedient that all offences committed on the open sea within a certain distance of the coasts of the United Kingdom and of all other parts of Her Majesty's dominions by whomsoever committed, should be dealt with according to law :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title. 1. This Act may be cited as the Territorial Waters Jurisdiction Act, 1878.

Amendment of the law as to the jurisdiction of the Admiral. 2. An offence committed by a person, whether he is or is not a subject of Her Majesty, on the open sea within the territorial waters of Her Majesty's dominion is an offence within the jurisdiction of the Admiral, although it may have been committed on board or by means of a foreign ship, and the person who committed such offence may be arrested, tried, and punished accordingly.

Restriction on institution of proceedings for punishment of offence. 3. Proceedings for the trial and punishment of a person who is not a subject of Her Majesty, and who is charged with any such offence as is declared by this Act to be within the jurisdiction of the Admiral, shall not be instituted in any court of the United Kingdom, except with the consent of one of Her Majesty's Principal Secretaries of State, and on his certificate that the institution of such proceedings is in his opinion expedient, and shall not be instituted in any of the dominions of Her Majesty out of the United Kingdom, except with the leave of the Governor of the part of the dominions in which such proceedings are proposed to be instituted, and on his certificate that it is expedient that such proceedings should be instituted.

Provisions as to procedure. 4. On the trial of any person who is not a subject of Her Majesty for an offence declared by this Act to be within the jurisdiction of the Admiral it shall not be necessary to aver in any indictment or information on such trial that such consent or certificate of the Secretary of State or Governor as is required by this Act has been given, and the fact of the same having

been given shall be presumed unless disputed by the defendant at the trial; and the production of a document purporting to be signed by one of Her Majesty's Principal Secretaries of State as respects the United Kingdom, and by the Governor as respects any other part of Her Majesty's dominions, and containing such consent and certificate, shall be sufficient evidence for all the purposes of this Act of the consent and certificate required by this Act.

Proceedings before a justice of the peace or other magistrate previous to the committal of an offender for trial or to the determination of the justice or magistrate that the offender is to be put upon his trial shall not be deemed proceedings for the trial of the offence committed by such offender for the purposes of the said consent and certificate under this Act.

5. Nothing in this Act contained shall be construed to be in derogation of any rightful jurisdiction of Her Majesty, her heirs or successors, under the law of nations, or to affect or prejudice any jurisdiction conferred by Act of Parliament or now by law existing in relation to foreign ships or in relation to persons on board such ships.

6. This Act shall not prejudice or affect the trial in manner heretofore in use of any act of piracy as defined by the law of nations, or affect or prejudice any law relating thereto; and where any act of piracy as defined by the law of nations is also any such offence as is declared by this Act to be within the jurisdiction of the Admiral, such offence may be tried in pursuance of this Act, or pursuance of any other Act of Parliament, law, or custom relating thereto.

7. In this Act, unless there is something inconsistent in the context, the following expressions shall respectively have the meanings hereinafter assigned to them; that is to say,
 "The jurisdiction of the Admiral," as used in this Act, includes the jurisdiction of the Admiralty of England and Ireland, or either of such jurisdictions as used in any Act of Parliament; and for the purpose of arresting any person charged with an offence declared by this Act to be within the jurisdiction of the Admiral, the territorial waters adjacent to the United Kingdom or any other part of Her Majesty's dominions^(a), shall be deemed to be within the jurisdiction of any judge, magistrate, or officer having power within such United Kingdom or other part of Her Majesty's dominions, to issue warrants for arresting or to arrest persons charged with offences committed within the jurisdiction of such judge, magistrate or officer:

"United Kingdom." "United Kingdom" includes the Isle of Man, the Channel Islands, and other adjacent islands:

"The territorial waters of Her Majesty's dominions," in reference to the sea, means such parts of the sea adjacent to the coast of the United Kingdom, or the coast of some other part of Her Majesty's dominions, as is deemed by international law to be within the territorial sovereignty of Her Majesty; and for the purpose of any offence declared by

Case-law :—(a) Territorial jurisdiction, 11 Bom. L.R. 211.

this Act to be within the jurisdiction of the Admiral, any part of the open sea within one marine league of the coast measured from low-water mark shall be deemed to be open sea within the territorial waters of Her Majesty's dominions:

"Governor", as respects India, means the Governor General or the Governor of any presidency; and where a British possession consists of several constituent colonies, means the Governor General of the whole possession or the Governor of any of the constituent colonies; and as respects any other British possession, means the officer for the time being administering the government of such possession; also any person acting for or in the capacity of Governor shall be included under the term "Governor":

"Offence" as used in this Act means an act, neglect, or default of such a description as would, if committed within the body of a country in England, be punishable on indictment according to the law of England for the time being in force:

"Ship." "Ship" includes every description of ship, boat, or other floating craft:

"Foreign ship." "Foreign ship" means any ship which is not a British ship.

THE TOLLS (ARMY) ACT, 1901.

(ACT II OF 1901.)

[Passed on the 22nd February, 1901.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1901	II	Tolls (Army) ...	Rep., Act X of 1914.

An Act to amend the law relating to the exemption from tolls of persons and property belonging to the Army.

WHEREAS certain officers, soldiers and other persons, and certain animals, baggage and carriages belonging or attached to the Army, are exempted by section 143 of the Army Act from payment of certain duties or tolls;

44 & 45 Vict.,
c. 58,

And whereas similar exemptions are made by various enactments of the Indian legislatures, but these exemptions are not co-extensive with those made by the said Army Act;

And whereas it is expedient to remove the inconsistency now existing between the said Army Act and the said enactments, and to exempt certain other persons and property belonging to the Army from payment of certain tolls;

And whereas it is declared by section 169 of the said Army Act that "it shall be lawful for the Governor General of India . . . to

provide by law for reducing any fine directed by this Act to be recovered on summary conviction to such amount as may appear to the Governor General to be better adapted to the pecuniary means of the inhabitants; and also to declare the amount of the local currency which is to be deemed for the purposes of this Act to be equivalent to any sum of British currency mentioned in this Act," and it is expedient to alter in the manner hereinafter appearing the fine imposed by section 143 of the said Army Act;

It is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called the Indian Tolls (Army) Act, 1901.

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti; and

(3) It shall come into force on the first day of April, 1901.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "ferry" includes every bridge and other thing which is a ferry within the meaning of any enactment authorizing the levy of tolls on ferries, but does not include any ferry or other thing which is included in the definition of "railway" in section 3 of the Indian Railways Act, 1890:

IX of 1890.

44 & 45 Vict.,
c. 58.

(b) the expression "His Majesty's Regular Forces" has the meaning assigned to it by section 190, clause (8), of the Army Act, and includes the Indian Reserve Forces when subject to military law:

(c) "horse" includes a mule and any beast of whatever description which is used for burden or draught or for carrying persons:

IV of 1888.

(d) the expression "Indian Reserve Forces" means the forces constituted by the Indian Reserve Forces Act, 1888, and includes persons holding commissions in the Indian Army Reserve of officers when called out in any military capacity:

(e) "landing-place" includes a pier, wharf, quay, jetty and a stage, whether fixed or floating:

(f) the expression "local corps" means the Hyderabad Contingent, the Central India Horse, the Malwa Bhil Corps, the Bhopal Battalion, the Deoli Irregular Force, the Erinpura Irregular Force, the Meywar Bhil Corps, the Merwara Battalion and the Escort of the Resident in Nepal, and includes any other corps which may be notified by the Governor General in Council in this behalf by order published in the Gazette of India:

(g) "public authority" means the Government or a local authority; and so far as regards tolls levied by a railway company under section 4 of the Indian Guaranteed Railways Act, 1879, or section 51 of the Indian Railways Act, 1890, includes such a railway company: and

42 & 43 Vict.,
c. 141.
IX of 1890.

- (h) "tolls" include duties, dues, rates, rents, fees and charges, but do not include customs-duties levied under the Indian Tariff Act, 1894, octroi-duties or town-duties on the import of goods, or fares paid for the conveyance of passengers on a tramway.

Exemptions from tolls. 3. The following persons and property, namely :—

- (a) all officers and soldiers of—
 - (i) His Majesty's Regular Forces,
 - (ii) any local corps, or
 - (iii) Imperial Service Troops, when on duty or on the march,
- (b) all members of a corps of Volunteers when on duty or when proceeding to or returning from duty,
- (c) all officers and soldiers of the Indian Reserve Forces when proceeding from their place of residence on being called out for training or service or when proceeding back to their place of residence after such training or service,
- (d) all grass-cutters when employed in the service of—
 - (i) His Majesty's Regular Forces,
 - (ii) any local corps,
 - (iii) Imperial Service Troops, or
 - (iv) any corps of Volunteers,
- (e) all other authorized followers of—
 - (i) His Majesty's Regular Forces,
 - (ii) any local corps,
 - (iii) Imperial Service Troops, or
 - (iv) any corps of Volunteers,

when they accompany any body of such Forces, Troops or Volunteers or any members of such corps on the march, or when they are otherwise moving under the orders of military authority,
- (f) all members of the families of officers, soldiers or authorized followers of—
 - (i) His Majesty's Regular Forces, or
 - (ii) any local corps,

when accompanying any body of troops, or any officer, soldier or authorized follower thereof on duty or on the march,
- (g) all prisoners under military escort,
- (h) the horses and baggage, and the persons (if any) employed in carrying the baggage, of any persons exempted under any of the foregoing clauses, when such horses, baggage or persons accompany the persons so exempted under the circumstances mentioned in those clauses respectively,
- (i) all carriages and horses belonging to His Majesty or employed in His Majesty's military service and all persons in charge

of or accompanying the same, when conveying any such persons as hereinbefore in this section mentioned, or when conveying baggage or stores, or when returning unladen from conveying such persons, baggage or stores,

- (j) all carriages and horses, when moving under the orders of military authority for the purpose of being employed in His Majesty's military service,
- (k) all animals accompanying any body of troops which are intended to be slaughtered for food or kept for any purpose connected with the provisioning of such troops, and
- (l) all persons in charge of any carriage, horse or animal exempted under any of the foregoing clauses when accompanying the same under the circumstances mentioned in those clauses respectively,

shall be exempted from payment of any tolls—

- (i) on embarking or disembarking, or on being shipped or landed, from or upon any landing-place, or
- (ii) in passing along or over any turnpike or other road or bridge, or
- (iii) on being carried by means of any ferry,

otherwise demandable by virtue of any Act, Ordinance, Regulation, order or direction of any legislature or other public authority in British India :

Provided that nothing in this section shall exempt any boats, barges or other vessels employed in conveying the said persons or property along any canal from payment of tolls in like manner as other boats, barges and vessels.

Tolls on vessels transporting troops and baggage, etc., of troops embarked or disembarked.

4. (1) No tolls shall be leviable by any local authority in respect of—

- (a) any vessel employed by the Government solely for the transport of troops, or
- (b) the horses, baggage or other effects of any troops embarking or disembarking at any port, or
- (c) carriages belonging to His Majesty or employed in His Majesty's military service embarking or disembarking at any port.

(2) In respect of all such vessels or troops, their families, their horses, baggage and their effects, or any such carriages as aforesaid, the local authority concerned shall, in addition to its duties in the embarking and disembarking of the same, perform and supply all such reasonable services and accommodation as may, from time to time, be required by the Government, and shall receive payment for all such services and accommodation on such terms and for such periods as may, from time to time, be determined by the Government in consultation with such local authority.

5. Any person who demands and receives any toll in contravention of the provisions of section 3 or section 4 shall be punishable with fine which may extend to fifty rupees.

Penalty.

6. (1) If any owner or lessee, or any Company, railway administration or local authority claims compensation for any loss alleged to have been incurred owing to the operation of this Act, the claim shall be submitted to the Local Government.

(2) On receiving any such claim, the Local Government, subject to the control of the Governor General in Council, shall pass such order thereon as justice requires, and shall give all necessary directions for the purpose of ascertaining the facts of the case and of assessing the compensation, if any, to be paid.

7. (1) The Governor General in Council, and the Local Government, with the previous sanction of the Governor General in Council, may make rules to carry out the purposes and objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Governor General in Council, or the Local Government, with the previous sanction of the Governor General in Council, may make rules providing for the form of passes to be given to persons or bodies of persons or in respect of property entitled to exemption from the payment of tolls under this Act.

(3) The power to make rules under this section is subject to the condition of the rules being made after previous publication.

(4) All rules made under this section shall be published in the Gazette of India or in the local official Gazette, and, on such publication, shall have effect as if enacted by this Act.

[1] * * *

THE INDIAN TRAMWAYS ACT, 1886.

(ACT XI OF 1886.)

[Passed on the 12th March, 1886.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1886	XI	Tramways ...	Rep. in pt., Act IX of 1890. Am., Act V of 1911.

An Act to facilitate the construction and to regulate the working of Tramways.

WHEREAS it is expedient to facilitate the construction and to regulate the working of tramways ; It is hereby enacted as follows :—

Preliminary.

Short title and commencement.

1. (1) This Act may be called the Indian Tramways Act, 1886 ; and

Leg. Changes :—[1] and of the Schedule so much as is unrepealed—repealed by Act X of 1914.

(2) It shall come into force at once.

2. (1) It extends in the first instance to the whole of British India except the territories administered by the Governor of
Local extent. Fort Saint George in Council, the Governor of Bombay in Council and the Lieutenant-Governor of Bengal.

(2) But the Governor of Fort Saint George in Council, the Governor of Bombay in Council or the Lieutenant-Governor of Bengal may, by notification in the official Gazette, extend this Act to the whole or any part of the territories under his administration.

Definitions. 3. In this Act, unless there is something repugnant in the subject or context,—

- (1) "local authority" means a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;
- (2) "road" means the way of a road, street, thoroughfare, passage or place along or across which a tramway authorised under this Act is, or is intended to be, laid, and includes the surface-soil and sub-soil of a road, and the footway, berms, drains and ditches of a road, and any bridge, culvert or causeway forming part of a road;
- (3) "road-authority," in relation to a road, means—
 - (a) if a local authority maintains and repairs the road, then that authority;
 - (b) if a local authority does not maintain and repair the road, and the road is neither vested in Her Majesty nor maintained and repaired by the Government, then the person in whom the road is vested; and
 - (c) if a local authority does not maintain and repair the road, and the road is vested in Her Majesty or maintained and repaired by the Government, then the Local Government.
- (4) "circle," in relation to a local authority or road authority, means the area within the control of that authority;
- [1] (5) "tramway" means a tramway having one, two or more rails, and includes—
 - (a) any part of a tramway, or any siding, turn-out, connection, line or track belonging to a tramway;
 - (b) any electrical equipment of a tramway; and
 - (c) any electric supply-line transmitting power from a generating station or sub-station to a tramway, or from a generating station to a sub-station from which power is transmitted to a tramway.
- (6) "order" means an order authorising the construction of a tramway under this Act, and includes a further order substituted for, or amending, extending or varying, that order;

- (7) "promoter" means a local authority or person in whose favour an order has been made, and includes a local authority or person on whom the rights and liabilities conferred and imposed on the promoter by this Act and by the order and any rules made under this Act as to the construction, maintenance and use of the tramway, have devolved :
- (8) "undertaking" includes all moveable and immoveable property of the promoter suitable to and used by him for the purposes of the tramway :
- (9) "carriage," in the case of a tramway on which steam-power or any other mechanical power [1] or electrical power [1] is used, includes an engine worked on the tramway for the purpose of producing [1] or utilising [1] that power :
- (10) "toll" includes any charge leviable in respect of the use of a tramway :
- (11) "lessee" means a person to whom a lease has been granted of right of user of a tramway and of demanding and taking the authorised tolls :
- (12) "District Magistrate" includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area all or any of the functions of a District Magistrate under this Act :
- (13) "District Court" means a principal Civil Court of original jurisdiction, and includes a High Court having ordinary original civil jurisdiction :
- (14) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area the functions of a Collector under this Act : and
- (15) "prescribed" means prescribed by rules made by the Local Government under this Act.

Orders authorising the Construction of Tramways.

Application for
and consent neces-
sary to making of
order.

4. (1) The Local Government may make an order authorising the construction of a tramway in a circle on application made—

- (a) by the local authority of the circle with the consent of the road-authority of any road or part of a road which is to be traversed by the tramway and of which the local authority is not itself the road-authority ; or
- (b) by any person with the consent of the local authority of the circle, and of the road-authority of any road or part of a road which is to be traversed by the tramway and of which the local authority is not the road-authority :

Provided that, if any part of the proposed tramway is to traverse land which is not included within the limits of a municipality or of a cantonment, the Local Government shall not make the order without the previous sanction of the Governor General in Council.

Leg. Changes:— [1] Inserted by Act V of 1911.

(2) A local authority shall not make an application for an order, or be deemed to consent to an application being made by any person for an order, unless the making of the application or the giving of the consent has been approved by the local authority in manner prescribed.

5. When it is proposed to lay a tramway in two or more circles, and a local authority or road-authority having control in either or any of the circles does not consent thereto, or attaches conditions to its consent, the Local Government may, nevertheless, make an order authorising the construction of the tramway in the circle, or by the order impose on the promoter any conditions which it deems fit, if, after considering the reasons of the authority for withholding its consent or attaching the conditions thereto, it is satisfied that the construction of the tramway in the circle is expedient, or, as the case may be, that the conditions attached by the authority to its consent ought not to be imposed.

6. (1) The Local Government on receiving an application shall consider it, and, if satisfied as to the propriety of proceeding thereon, publish in the official Gazette, and in such other manner as it deems sufficient for giving information to persons interested, a draft of a proposed order authorising the construction of the tramway.

(2) A notice shall be published with the draft stating that any objection or suggestion which any person may desire to make with respect to the proposed order will, if submitted to the Local Government on or before a date to be specified in the notice, be received and considered.

(3) If, after considering any objections or suggestions which may have been made with respect to the draft on or before the date so specified, the Local Government is of opinion that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, it may make an order accordingly.

(4) Every order authorising the construction of a tramway shall be published in the official Gazette in English, and in the other prescribed language or languages, if any; and that publication shall be conclusive proof that the order has been made as required by this section.

7. (1) An order made under section 6 shall empower the promoter therein specified to construct and maintain the tramway therein described in the manner therein provided, and shall specify the time within which the tramway shall be commenced and the time within which it shall be completed and opened for public traffic.

(2) The order may also provide, in manner consistent with this Act, for all or any of the following among other matters, that is to say:—

(a) a period before the expiration of which the tramway shall not be commenced, and the conditions subject to which the local authority, when it is not itself the promoter, may, within that period, elect to be substituted in the place of the promoter in respect of the undertaking or of so much thereof as is within its circle; and the limits of time within which, and the terms

upon which, the local authority may, after the tramway has been constructed, require the promoter to sell to it the undertaking or so much thereof as is within its circle ;

- (b) the acquisition by the promoter of land for the purposes of the tramway, and the disposal by him of land which has been acquired but is no longer required for those purposes ;
- (c) the conditions subject to which roads may be opened and broken up for the purposes of the construction or maintenance of the tramway or any part thereof, and the method of, and materials to be used in, the reinstating of the roads, and the approval of the method and materials by the Local Government or the road-authority before the commencement of the work ;
- (d) the conditions on which the tramway may be constructed over a bridge or across a railway or tramway when the carriageway over the bridge is to form part of the tramway or when the tramway is to cross a railway or another tramway on the level ;
- [1] (e) the space which shall ordinarily intervene between the outside of the carriageway on either side of a road whereon the tramway is to be constructed, and—
 - (i) in the case of a tramway having one rail, the rail of the tramway, or
 - (ii) in the case of a tramway having two or more rails, the nearest rail of the tramway,

and the conditions on which a smaller space may be permitted.

- (f) the gauge of the tramway, the rails to be used, and the mode in which, and the level at which, they shall be laid and maintained ; and the adoption and application by the promoter of such improvements in the rails, and in their situation, and in the sub-structure upon which they rest, as the Local Government may from time to time require ;
- (g) the portion of the road or roads traversed by the tramway to be kept in repair by the promoter ; the maintenance by the promoter to the satisfaction of the Local Government or the road-authority, or both, of that portion of the road or roads ; and the liability of the promoter, on the requisition of the Local Government, from time to time to adopt and apply such improvements in the tramway as the Local Government may consider necessary or desirable for the safety or convenience of the public, and to alter the position or level of the tramway to suit future alterations in the road or roads ;
- (h) the application of material excavated by the promoter in the construction or maintenance of the tramway ;
- (i) the provision of such crossings, passing-places, sidings, junctions and other works, in addition to those specified in or authorised by the order, as may from time to time be necessary or convenient to the efficient working of the tramway ;

Leg. Changes :—[1] Substituted by Act V of 1911.

- (j) the powers which may from time to time be exercised by the Local Government, the local authority, the road-authority or any person in respect of sewers, drains, telegraph-lines, gas-pipes, water-pipes or other things in or on land occupied by the tramway; the notice (if any) to be given of the intended exercise of those powers; the manner in which the powers shall be exercised; and the extent to which the tramway and the traffic thereon may be interfered with in the exercise thereof;
- (k) the conditions subject to which the promoter may from time to time interfere with, or alter or require the alteration of the position of, drains (not being sewers or main drains), telegraph-lines, gas-pipes, water-pipes or other things as aforesaid;
- (l) the provision of a temporary tramway in place of a part of a tramway which has been removed, or of which the use has been discontinued by reason of the execution of any work affecting a road along which the part of the tramway was laid, or by reason of the use of the road being interrupted by floods or other cause;
- (m) the motive power to be used on the tramway, and the conditions on which steam-power or any other mechanical power [1] or electrical power [1] may be used;
- (n) the nature, dimensions, fittings, appliances and apparatus of the carriages to be used on the tramway, and the inspection and examination thereof by officers of the Local Government or the local authority, and the liability of the promoter or lessee, on the requisition of the Local Government, from time to time, to adopt and apply such improvements in the carriages, and in the fittings, appliances and apparatus, as the Local Government may consider necessary or desirable for the safety or convenience of the public;
- (o) the traffic which may be carried on the tramway, the traffic which the promoter or lessee shall be bound to carry, and the traffic which he may refuse to carry; the tolls to be leviable by the promoter or lessee, and the periodical revision thereof by the Local Government; and the regulation of the traffic and of the levy of the tolls;
- (p) the use of the tramway free of toll by the local authority, with its own carriages, for specified purposes, during specified hours, with power to the local authority to make such sidings and other works as may be necessary for communication between its premises and the tramway;
- (q) the conditions subject to which the promoter may transfer the undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise; and the conditions subject to which the local authority may be the transferee;
- (r) the performance by the Local Government or by the local authority or road-authority of any work required by the Act or the order to be done by the promoter; and

- (s) the penalty to be incurred by the promoter or lessee for failure to observe any condition or direction contained in the order, and the application of the penalty when recovered.

(3) The Local Government may, in providing in the order for the acquisition of land for the purposes of a tramway of which the promoter is not a company, direct that land may be acquired for the promoter under the provisions of the Land Acquisition Act, 1870, in the same manner and on the same conditions as it might be acquired for the purposes of the tramway if a company were the promoter. X of 1870.

- (4) The order shall imply the condition—

- (a) in the case of a tramway of which a local authority is the promoter, that a lease thereof shall be granted only in manner by this Act provided; and
- (b) in the case of a tramway of which a local authority is not the promoter, that a lease thereof shall be only of the right of user and of demanding and taking the authorised tolls, and shall not confer or impose on the lessee any of the powers or duties of the promoter in respect of the construction or maintenance of the tramway.

8. (1) The Local Government may, on the application of the promoter, revoke, amend, extend or vary the order by a further order.

(2) An application for a further order shall be made in the same manner and subject to the same conditions as an application for an order.

(3) The Local Government may, in its discretion, either grant or reject the application.

(4) If it grants the application, it shall make the further order in the same manner as an order, except that no addition to, or modification of, the rights, powers and authorities asked for in the application, or restriction or condition with respect thereto, shall be made or imposed by the further order without the consent in writing of the promoter.

9. (1) Subject to, and in accordance with, the provisions of this Act, the Local Government may, on a joint application, or on two or more separate applications, make an order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof.

(2) All the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of the tramway, and the form of the order may be adapted to the circumstances of the case.

Cessation of powers given by an order. 10. (1) If a promoter authorised by an order to construct a tramway—

- (a) does not within the time specified in the order substantially commence the construction of the tramway, or
- (b) having commenced the construction suspends it without a reason sufficient in the opinion of the Local Government to warrant the suspension, or

(c) does not within the time specified in the order complete the tramway and open it for public traffic, the following consequences shall ensue :—

- (i) the powers given by the order to the promoter for constructing the tramway and otherwise in relation thereto shall, unless the Local Government, by special direction in writing, prolongs the time or condones the suspension, cease to be exercised except as to so much of the tramway as is then completed ;
- (ii) as to so much of the tramway as is then completed, the Local Government may either permit, or refuse to permit, the powers given by the order to continue ;
- (iii) if the Local Government refuses to permit the powers to continue, then so much of the tramway as is then completed may be dealt with, under the provisions of this Act relating to the discontinuance of tramways, as a tramway of the working whereof the discontinuance has been proved to the satisfaction of the Local Government.

(2) A notification published by the Local Government in the official Gazette to the effect that on a date specified in the notification the construction of a tramway had not been substantially commenced or a tramway had not been completed and opened for public traffic, or that the construction of a tramway had been suspended without sufficient reason, shall, for the purposes of this section, be conclusive proof of the matter stated therein.

Construction and Maintenance of Tramways.

Mode of formation of tramway. **11.** A tramway shall be constructed and maintained in the manner provided by the order.

12. A tramway, or portion or extension of, or addition to, a tramway, shall not be opened for public traffic until an engineer appointed in this behalf by the Local Government has inspected it and certified it to be fit for such traffic.

Inspection of tramway before opening.

13. Subject to the provisions of any order for the time being in force with respect to the matters mentioned in section 7, sub-section (2), clause (g), the road-authority and the promoter may from time to time enter into agreements as to the keeping in repair of the whole or a part of a road traversed by a tramway, and as to the proportion to be paid by either of them of the expense of keeping the road or part in repair.

Agreement between road-authority and promoter as to repair of road-way.

Traffic on Tramways.

14. (1) The promoter of a tramway shall, subject to the provisions of sub-section (2) and to the other provisions of this Act and of the order, have the exclusive use of the tramway for carriages with flange-wheels or other wheels suitable to run on the rail described in the order as the rail to be used on the tramway :

Rights of promoter and the public over tramways.

Provided that nothing in this Act or in the order or any rule made under this Act shall affect the right of any person authorised to use a tramway or railway to pass across a tramway constructed under this Act with carriages having wheels suitable to run on the rail thereof.

(2) The public shall have a right to pass along or across any part of a road along or across which a tramway is constructed, whether on or off the tramway, with carriages not having flange-wheels or other wheels suitable to run on the rail of the tramway :

Provided—

- (a) that this sub-section shall not apply where the tramway is constructed on land the right to the exclusive possession of which has been acquired by the promoter; and
- (b) that the Local Government may by an order authorise the construction of a tramway on any part of a road with rails raised above the surface of the road, if it is satisfied that the convenience of the public will not be injuriously affected thereby.

15. (1) The promoter or lessee may demand and take, in respect of the tramway, tolls not exceeding the limits specified in or determinable under the order, or if the order contains no provision in this behalf, then such sums as may from time to time be fixed by the promoter or lessee with the previous sanction of the Local Government.

(2) A list of all the tolls authorised to be levied shall be exhibited, in such languages as the District Magistrate may direct, in a conspicuous place inside and outside each of the carriages used upon the tramway.

16. (1) A person shall not be entitled to carry or to require to be carried, on a tramway constructed under this Act, any goods of a dangerous or offensive nature.

Carriage of dangerous or offensive goods.

(2) A person taking such goods with him on the tramway shall, before entering the carriage, give notice of their nature to the servant of the promoter or lessee in charge of the carriage.

(3) A person sending such goods by the tramway shall distinctly mark their nature on the outside of the package containing them, or otherwise give notice thereof in writing to the servant of the promoter or lessee with whom he leaves them for the purpose of their being sent by the tramway.

(4) Any servant of the promoter or lessee may refuse to carry upon the tramway a parcel which he suspects to contain goods of a dangerous or offensive nature, and, if any such parcel has been received for the purpose of being carried upon the tramway, may stop the transit thereof until he is satisfied as to the nature of its contents.

(5) Where a servant of the promoter or lessee refuses under sub-section (4) to carry a parcel which has been received for the purpose of being carried upon the tramway, he shall, as soon as may be, give notice

of his refusal to the consignor or consignee if he refuses at a time when neither of them is present.

Licenses to use Tramways.

17. If, at any time after a tramway or part of a tramway has been for three years opened for public traffic in a circle, the local authority of the circle represents in writing to the Local Government that the public is deprived of the full benefit of the tramway or of the part thereof, the Local Government may, if after considering any statement which the promoter or lessee or both may desire to make, and after such further enquiry as it deems necessary, it is satisfied as to the truth of the representation, grant a license to any person to use the tramway conformably to this Act and to the order and the rules made under this Act, subject to the following provisions, namely :—

Grant to third parties of licenses to use tramway in certain events.

- (a) the license shall be for a period not less than one year or more than three years from the date of the license, but the Local Government may in its discretion renew it ;
- (b) the license shall be to use the whole of the tramway for the time being opened for public traffic, or such part or parts of the tramway as the Local Government, having regard to the cause for granting the license, thinks fit ;
- (c) the license shall specify the number of carriages which the licensee shall run upon the tramway, the mode in which, and times at which, the carriages shall be run, the tolls to be paid to the promoter or lessee by the licensee for the use of the tramway, and the tolls, being those for the time being leviable by the promoter or lessee, which the licensee may demand and take for the use of his carriages ;
- (d) the licensee and his officers and servants shall permit one person, duly authorised for that purpose by the promoter or lessee, to travel free of toll in or upon each carriage of the licensee run upon the tramway for the whole or any part of a journey ;
- (e) any provision of this Act, or of the order or rules made under this Act, relating to the functions of a servant of a promoter or lessee shall be construed, so far as may be, as referring to a servant of the licensee ; and
- (f) the Local Government may revoke, alter or modify the license for any cause sufficient in its opinion to warrant the revocation, alteration or modification thereof.

18. A licensee shall, on demand, give to an officer or servant authorised in that behalf by the promoter or lessee an exact account in writing, signed by the licensee, of the number of passengers, or number or quantity of goods, conveyed by any and every carriage used by him on the tramway.

Licensee to give to promoter or lessee an account of traffic.

Discontinuance of Tramways.

19. If it is proved to the satisfaction of the Local Government, at any time after the opening of a tramway for public traffic, that the working of the tramway, or any part thereof, has been practically discontinued, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance, the Local Government, if it thinks fit, may, by notification in the official Gazette, declare that the powers of the promoter and of the lessee, if any, in respect of the tramway or the part thereof of which the working has been so discontinued, shall, from the date of the notification, be at an end; and thereupon the said powers shall cease and determine, except in so far as they may be purchased by a local authority in manner by this Act provided.

20. (1) Where a notification has been published under section 19, the road-authority may, at any time after the expiration of two months from the date of the notification, remove the tramway or part of the tramway of which the working has been so discontinued, and use the materials thereof in reinstating the road.

(2) The promoter shall pay to the road-authority the cost incurred by that authority in removing the tramway or the part thereof and in reinstating the road.

(3) The cost shall be certified by an officer of the road-authority, and his certificate, countersigned by the District Magistrate, shall be conclusive proof as to the cost incurred.

(4) If the promoter does not pay the amount so certified within one month after the delivery to him of the certificate or of a copy thereof, the road-authority may, without any previous notice to the promoter and without prejudice to any other remedy which it may have for the recovery of the amount, sell and dispose of such materials of the tramway or part thereof removed as it has not used in reinstating the road, either by public auction or by private sale, and for such sum or sums, and to such person or persons, as it thinks fit, and may, out of the proceeds of the sale, pay and reimburse itself the amount of the cost aforesaid and of the expenses of the sale, and shall pay over the residue (if any) of the proceeds of the sale to the promoter.

Insolvency of Promoter.

21. (1) If, at any time after the opening of a tramway in a circle for public traffic, it appears to the road-authority or local authority of the circle that the promoter of the tramway is insolvent, so that he is unable to maintain the tramway, or to work it with advantage to the public, and either of those authorities makes a representation to that effect to the Local Government, the Local Government may, if after considering any statement which the promoter may desire to make, and after such further enquiry as it deems necessary, it is satisfied as to the truth of the representation, declare, by notification in the official Gazette, that the powers

of the promoter shall, at the expiration of six months from the publication of the notification, be at an end; and the powers of the promoter shall cease and determine at the expiration of that period, except in so far as they may be purchased by a local authority in manner by this Act provided.

(2) Where a notification has been published under sub-section (1), the road authority may, at any time after the expiration of six months from the date thereof, remove the tramway in the same manner, and subject to the same provisions as to the payment of the cost of the removal and to the same remedy for recovery of the cost, in every respect as in cases of removal under section 20.

Purchase of Tramways.

Future purchase
of undertaking by
local authority.

22. (1) Where the promoter of a tramway in a circle is not the local authority, the local authority, with the previous sanction of the Local Government, may—

- (a) within such limits of time as may be specified in this behalf in the order, or
- (b) if a time was not specified in the order, then within six months after the expiration of a period of twenty-one years from the date of the order, and within six months after the expiration of every subsequent period of seven years, or
- (c) within two months after the publication of a notification under section 19 or within six months after the publication of a notification under section 21,

by notice in writing, require the promoter to sell to the local authority his undertaking or the part thereof which is within the circle of the local authority; and thereupon the promoter shall sell the same upon the terms specified in the order, or if the terms were not specified in the order, then upon the terms of paying the then value of the undertaking or of the part thereof, exclusive of any allowance for past or future profits of the undertaking or any compensation for compulsory sale or other consideration whatsoever.

(2) A requisition shall not be made under sub-section (1) unless the making thereof has been approved by the local authority in manner prescribed.

(3) When a sale has been made under this section, all the rights, powers and authorities of the promoter in respect of the undertaking or part thereof sold or, where a notification has been published under section 19 or section 21, all the rights, powers and authorities of the promoter previous to the publication of the notification in respect of the undertaking or part thereof sold, shall be transferred to the authority to whom the undertaking or part has been sold, and shall vest in, and may be exercised by, that authority in the same manner as if the tramway had been constructed by it under an order made under this Act.

(4) Subject to, and in accordance with, the preceding provisions of this section, two or more local authorities may jointly purchase an undertaking or so much thereof as is within their circles.

Working of Tramways owned by Local Authorities.

23. (1) When a local authority has under the authority of an order completed a tramway, or has under the provisions of this Act or of an order acquired possession of a tramway, it may, by a lease to be approved by the Local Government, let to any person the right of user of the tramway and of demanding and taking the authorized tolls.

(2) On the determination of a lease the local authority may from time to time let the right for such further term and on such conditions as the Local Government may approve.

(3) Every lease made under this section shall imply a condition of re-entry if at any time after the making thereof it is proved to the satisfaction of the Local Government that the lessee has practically discontinued the working of the tramway leased, or of any part thereof, for the space of one month without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance.

(4) Notice of the intention of the local authority to make a lease shall be given in manner prescribed.

(5) If the local authority cannot by means of a lease obtain what it deems to be a fair rent for the tramway, it may itself, with the previous sanction of the Local Government and for such term as the Local Government directs, place and run carriages upon the tramway, and demand and take the authorized tolls in respect of the use of the carriages.

Rules.

24. (1) In addition to any other power to make rules expressly or by implication conferred by this Act, the Local Government may make rules consistent with this Act—

- (a) as to the form in which an application for an order shall be made ;
- (b) as to the costs to be paid by an applicant in respect of an order and the time when, and the place where, those costs shall be paid ;
- (c) as to the payment of money or lodgment of securities, by way of deposit, by the applicant for an order before the order is published under section 6, sub-section (4), or a further order is made under section 8 ; the investment of money so paid ; the disposal of interest or dividends from time to time accruing due on money or securities so paid, lodged or invested ; the application of the money or securities or the produce thereof to the discharge of any liability incurred by the promoter ; and the forfeiture, repayment or return of the money or securities ;
- (d) as to the plans and sections of any works to be deposited by applicants for orders or by promoters ;
- (e) for regulating the use of steam-power or any other mechanical power [1] or electrical power [1] on a tramway ;

Leg. Changes :—[1] Inserted by Act V of 1911.

- (f) as to any matter specified in section 7, sub-section (2), clauses (c), (d), (e), (j) and (k), as a matter which may be provided for in an order, when that matter has not been so provided for, or has not, in the opinion of the Local Government, been effectually so provided for ;
- (g) as to the periodical submission, by promoters, lessees and licensees, of accounts of traffic and receipts to the Local Government or as that Government directs, and as to the forms in which those accounts are to be submitted ;
- (h) as to the accidents of which report is to be made to the Local Government or as that Government directs ;
- (i) as to any matter respecting which rules may be made under this section by a local authority or a promoter or lessee ; and,
- (j) generally, as to any other matter or thing in respect of which it may seem to the Local Government to be expedient to make rules for carrying out the purposes of this Act.

(2) A local authority may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Act and with the order and any rules made by the Local Government under this Act for regulating—

- (a) the rate of speed to be observed in travelling upon a tramway within the circle of the local authority ;
- (b) the use of animal power on the tramway ;
- (c) the distances at which carriages using the tramway are to be allowed to follow one after the other ;
- (d) the stopping of carriages using the tramway and the notice to be given to the public of their approach ;
- (e) the manner in which carriages using the tramway after sunset and before sunrise are to be lighted ;
- (f) the traffic on roads along or across which the tramway is laid ;
- (g) the number of passengers which may be carried in any carriage ;
- (h) (a) the licensing and control of drivers, conductors and other persons having charge of the carriages of the promoter or lessee or a licensee ; and,
- (i) generally, the mode of use of the tramway.

(3) The promoter or lessee of a tramway may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Act and with the order and any rules made under this Act—

- (a) for preventing the commission of any nuisance in or upon any carriage, or in or against any premises, belonging to him ; and
- (b) for regulating the travelling in any carriage belonging to him.

(4) The Local Government may cancel any rule made by a local authority or by a promoter or lessee under this section.

Power to impose penalty by rule. 25. The authority making any rule under section 24 may direct that a breach of it shall be punishable with fine which may extend—

(a) if the authority making the rule is the Local Government, to two hundred rupees, and

(b) if that authority is a local authority or a promoter or lessee, to twenty rupees;

and when the breach is a continuing breach, with a further fine which may extend—

(c) if the authority making the rule is the Local Government, to fifty rupees, and,

(d) if that authority is a local authority or a promoter or lessee, to five rupees,

for every day after the first during which the breach continues.

Procedure for making, and publication of, rules. 26. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by a local authority or by a promoter or lessee, in manner prescribed.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive proof that it has been duly made.

Offences.

Penalty for failure of promoter, lessee or licensee to comply with Act or order.

27. If a promoter—

(a) constructs or maintains a tramway otherwise than in accordance with the order, or

(b) opens the tramway for traffic, or permits it to be so opened, before it has been inspected and certified in manner required by section 12, or

(c) fails to observe any requirement or condition of the order for neglect or breach whereof no penalty has been expressly provided in the order,

or if a promoter, lessee or licensee runs a carriage on a tramway otherwise than in accordance with the order.

he shall (without prejudice to the enforcement of specific performance of the requirements of this Act or of the order, or to any other remedy

which may be obtained against him in a Court of Civil Judicature), on complaint made by the Local Government or by the local authority or road-authority or by the District Magistrate or, with the previous sanction of the District Magistrate, by any person injuriously affected by the act or omission, be punished with fine which may extend to two hundred rupees, and in the case of a continuing offence to a further fine which may extend to fifty rupees for every day after the first during which the offence continues to be committed.

28. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully obstructs any person acting under the authority of the promoter in the lawful exercise of his powers in constructing or maintaining a tramway, or injures or destroys any mark made for the purpose of setting out the line of the tramway, he shall be punished with fine which may extend to fifty rupees.

29. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully does any of the following things, namely :—

- (a) interferes with, removes or alters any part of a tramway constructed under this Act, or of the works connected therewith, or
- (b) places or throws upon or across any such tramway any wood, stone, refuse or other thing, or
- (c) does anything in such a manner as to obstruct any carriage using any such tramway, or
- (d) abets within the meaning of the Indian Penal Code the doing of, or attempts to do anything mentioned in clause (a), clause (b), or clause (c),

he shall (without prejudice to any other remedy which may be obtained against him in a Court of Civil Judicature) be punished with fine which may extend to one hundred rupees.

30. If any person, except under a lease from, or by agreement with, the promoter, or under license from the Local Government granted under this Act, uses on a tramway, otherwise than as permitted by section 14, a carriage having flange-wheels or other wheels suitable to run on the rail of the tramway, he shall be punished with fine which may extend to two hundred rupees.

31. (1) If any person travelling or having travelled in a carriage of the promoter or lessee or of a licensee evades or attempts to evade payment of toll, or if any person having paid toll for a certain distance wilfully proceeds in any such carriage beyond that distance and does not pay the additional toll for the additional distance or

Case-law :—(a) Person who fails to pay for and purchase a fresh ticket on break of journey, liable to conviction, 6 Bur. L.T. 193=7 L.B.R. 53=21 Ind. Cas. 164=14 Cr. L.J. 564.

attempts to evade payment thereof, or if any person wilfully refuses or neglects on arriving at the point to which he has paid toll to quit the carriage, he shall be punished with fine which may extend to ten rupees.

(2) When a person commits an offence under this section and refuses on demand of a servant of the promoter, lessee or licensee to give his name and residence, or gives a name or residence which the servant has reason to believe to be false, he may be arrested and taken to the nearest police-station by the servant or any person whom the servant may call to his aid.

(3) When the person is taken to the police-station he shall with the least possible delay be forwarded to the nearest Magistrate, unless his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate if so required.

Penalty for taking or sending dangerous or offensive goods without giving notice.

32. If any person takes or sends by a tramway any goods of a dangerous or offensive nature without giving the notice required by section 16, he shall be punished with fine which may extend to fifty rupees.

Penalty for licensee not giving to promoter or lessee an account of traffic or giving false account.

33. (1) If a licensee fails on demand to give the account mentioned in section 18, or, with intent to evade the payment of tolls, gives a false account when he is called upon to give an account under that section, he shall be punished with fine which may extend to fifty rupees.

(2) The fine shall be in addition to any tolls payable by the licensee to the promoter or lessee in respect of the passengers or goods conveyed by the carriage or carriages used by the licensee on the tramway.

34. Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or the rules made under it: Provided that a person shall not be punished twice for the same offence.

Saving of prosecutions under other laws.

Settlement of Differences.

35. (1) If any difference arises between the promoter or lessee on the one hand and the Local Government or the local authority, or the road-authority, or a person having the charge of any sewers, drains, telegraph-lines, gas-pipes, water-pipes, or other things in or on land occupied by the tramway, on the other hand, with respect to any interference or control exercised or claimed to be exercised by, or on behalf of, either party by virtue of this or any other Act, or of the order or the rules made under this Act, or with respect to the propriety of, or the mode of, the execution of any work, or with respect to any compensation to be made by or to the promoter or lessee, or on the question whether any work is such as ought reasonably to satisfy the Local Government or the road-authority or both, or with respect to any other subject or thing regulated

Differences between promoters or lessees and authorities.

XIV of 1882. by, or comprised in, this Act or the order or the rules made under this Act, and not otherwise expressly provided for therein, the matter in difference shall, except where the parties elect to proceed under section 523 of the Code of Civil Procedure be settled, on the application of either party, by a referee.

(2) Where the difference is—

- (a) between the promoter or lessee on the one hand and the Local Government, either as such or as the road-authority, on the other, or
- (b) between the promoter on the one hand and the local authority on the other, with respect to the sum to be paid by the local authority for an undertaking or part of an undertaking which that authority has required the promoter to sell under section 22,

the referee shall be the District Court within the jurisdiction of which the tramway is situate, or, where the tramway is within the jurisdiction of more than one District Court, the District Court within the jurisdiction of which the greater part of the tramway is situate.

(3) In other cases the referee shall be appointed by the Local Government.

(4) Except where the referee is the District Court, the powers and procedure of the referee may be prescribed.

(5) In the case of a difference between a promoter on the one hand and a local authority on the other, with respect to the sum to be paid by the local authority for an undertaking or part of an undertaking which that authority has required the promoter to sell under section 22, an appeal shall lie to the High Court from the award of the referee as from an original decree of the District Court.

(6) In the case of every other difference the award of the referee shall be final.

Recovery of Tolls.

36. Any of the following moneys, namely, any rent due to a local authority from a lessee, any penalty recoverable from a promoter or lessee under an order, any sum payable by a promoter or lessee under an award of a referee, the cost of the performance under this Act by the Local Government or by a local authority or road-authority of any work required by this Act or by an order to be done by a promoter, and the cost incurred by a road-authority in removing a tramway and re-instating a road under this Act, may, without prejudice to any other remedy that the authority to which the money is due may have by suit or otherwise, be recovered by that authority, on application made in this behalf to the Collector, as if the sum due were an arrear of land-revenue due by the promoter or lessee or his surety (if any):

Provided that nothing in this section shall authorise the arrest of the promoter or lessee or his surety in execution of any process issued by the Collector.

37. (1) If a licensee fails to pay on demand the tolls due for the use of a tramway, the promoter or lessee to whom the tolls are due may, without prejudice to the remedy which he may have by suit, apply to a Magistrate to recover the amount of the tolls, and the Magistrate may, after giving notice to the licensee if possible and allowing him an opportunity of being heard, proceed to recover the amount by distress and sale of any carriages or other moveable property of the licensee which may be found on the tramway or on premises connected therewith.

(2) When a licensee has failed to pay on demand the tolls due from him, the promoter or lessee to whom the tolls are due may seize any carriage or other moveable property of the licensee on the tramway or on premises connected therewith, and detain the same for forty-eight hours unless the tolls are sooner paid.

(3) When application is made to a Magistrate under sub-section (1), he may make an interim order of distraint pending his final decision.

38. Any tolls due to a promoter, lessee or licensee from a passenger may be recovered either by suit or, on application to a Magistrate having jurisdiction within any local area in which any part of the tramway is laid, by distress and sale of any moveable property belonging to the passenger within the local limits of the jurisdiction of the Magistrate.

Savings.

39. (1) Notwithstanding anything contained in this Act, or in an order or any rule made under this Act, a promoter shall not acquire any right other than that of user only over a road along or across which he lays a tramway, nor shall anything contained in this Act, or in an order or any rule made under this Act, exempt the promoter of a tramway, or any other person using the tramway, from the payment of such charges as may lawfully be levied in respect of the use of a road or bridge along or across which the tramway is laid.

(2) The Local Government may, if it thinks fit, fix rates at which a promoter, lessee or licensee may compound for the charges payable in respect of the use of a road or bridge.

40. (1) Nothing in this Act, or in an order or any rule made under this Act, shall take away or abridge any power which a road-authority, local authority or other person has by law to break up, widen, alter, divert or improve a road, railroad or tramway along or across which a tramway is laid.

(2) The road-authority, local authority or other person executing any work referred to in sub-section (1) shall not be liable to pay to a promoter, lessee or licensee any compensation for injury done to a tramway by the execution of the work or for loss of traffic occasioned by the reasonable use of any power lawfully exercised for the execution thereof.

41. Nothing in this Act, or in an order or any rule made under this Act, shall affect the powers of a local authority or of a Magistrate or police-officer to regulate the passage of traffic along or across a road along or across which a tramway is laid; and the authority, Magistrate or officer aforesaid may exercise its or his powers as well on as off the tramway and with respect as well to the traffic of a promoter, lessee or licensee as to the traffic of other persons.

Saving of power of local authority and police to regulate traffic on roads.

Supplemental Provisions.

42. A promoter, lessee or licensee shall be answerable for all injuries happening through his act or default, or through the act or default of any person in his employment, by reason or in consequence of any of his carriages or works, and shall save harmless all authorities and persons collectively and individually, and their officers and servants, from all damages and costs in respect of injuries so happening.

Promoters, lessees and licensees to be responsible for all injuries.

Want of funds not a sufficient reason for default.

43. For the purposes of this Act want of funds shall not be deemed to be a sufficient reason for the suspension of the construction, or the discontinuance of the working, of a tramway by a promoter or lessee.

44. When a tramway is constructed under this Act within the limits of a municipality, the Local Government may exempt the animals, plant, rolling-stock, yards, workshops, enginesheds, [1] electrical generating stations or sub-stations[1] and depots of the promoter, lessee or licensee, for such period as it thinks fit, from all or any municipal taxes leviable within those limits.

Power to exempt from municipal taxation.

45. (1) The fund to or with the control or management of which the local authority of a municipality, cantonment or district is entitled or entrusted shall, notwithstanding anything in any enactment respecting the purposes to which that fund may be applied, be applicable, subject to the control of the Local Government, to the payment of expenses incidental to the exercise of the powers and functions which may be vested in or exercised by a local authority under this Act.

Application by local authorities of local funds to tramways.

(2) The fund shall also be applicable, with the previous sanction of the Local Government, to a guarantee of the payment of interest on money to be applied, with the concurrence in writing of the local authority, within the limits of the local area under its control, to any of the purposes to which the fund might be applied by the local authority under subsection (1).

46. The Local Government may, with the consent of the local authority and road-authority and of the promoter and his lessee (if any), extend any part of this Act, or any rules made under this Act, either with or without modification, to the whole or any part of a tramway

Extension of Act to existing tramways.

S. 1 ACT XX OF 1917 (TRANSFER OF SHIPS, ETC.). Transfer of Ships

constructed, or authorised by the Local Government to be constructed, before the passing of this Act, and may withdraw any part of the Act or any rules so extended.

47. (1) A tramway of which the construction has not been authorised by the Local Government before the passing of this Act shall not, after the passing of this Act, be constructed for public traffic in any place to which this Act extends, except in pursuance of an order made under this Act.

Prohibition of construction of tramways except under this Act.

(2) A person constructing a tramway in contravention of subsection (1) of this section,

or after the passing of this Act maintaining or using for public traffic, otherwise than in pursuance of an order made under this Act, a tramway which was not constructed, or authorised by the Local Government to be constructed, before the passing of this Act,

shall be liable, on the complaint of the Local Government or local authority, to double the penalty to which a promoter acting otherwise than in accordance with an order is liable under section 27.

48. If at any time a local area comprising a tramway to which this Act or any part thereof or any rule thereunder applies ceases to be included in the circle of a local authority, the functions of that authority under this Act or the part thereof or the rule thereunder and under the order (if any), shall, in respect of that local area, devolve on the Local Government or, if that Government so directs, on the local authority of the circle in which the tramway has been included.

Transfer of control on exclusion of local area from circle of local authority.

49. [Explanation and amendment of section 54 of Railway Act.]
Rep. by the Indian Railways Act, 1890 (IX of 1890).

Powers of Local Government exercisable from time to time.

50. All powers conferred by this Act on a Local Government may be exercised from time to time as occasion requires.

**THE TRANSFER OF SHIPS RESTRICTION
ACT, 1917.**

(ACT XX OF 1917.)

[Passed on the 19th September 1917.]

An Act to restrict the transfer of ships registered in British India.

WHEREAS it is expedient to restrict the transfer of ships registered in British India; It is hereby enacted as follows:—

Short title and duration.

1. (1) This Act may be called the Indian Transfer of Ships Restriction Act, 1917.

(2) It shall remain in force during the continuance of the present war, and for three years thereafter.

Transfer of Ships ACT XX OF 1917 (TRANSFER OF SHIPS, ETC.). S. 2

Interpretations.

2. In this Act —

(1) (a) "British subject" means a person who—

4 & 5 Geo. V,
c. 17.

(i) is a natural born British subject within the meaning of the British Nationality and Status of Aliens Act, 1914, or

(ii) holds a certificate of naturalization granted under any Act of Parliament, or

XXX of 1852.

(iii) holds a certificate of naturalization granted under the Indian Naturalization Act, 1852,

(b) "foreign-controlled company" includes any company, firm or association or body of individuals whether incorporated or not—

(i) which is not established in and subject to the laws of some part of His Majesty's dominions or of some British Protectorate, and has not its principal place of business therein, or

(ii) of which the majority of the directors or the partners or persons occupying the position of directors or partners by whatever name called are not British subjects, or

(iii) of which the majority of the voting power or the predominant interest is in the hands of persons who are not British subjects or of persons who exercise their voting power or hold their interest directly or indirectly on behalf of persons who are not British subjects, or

(iv) of which the control is by any other means whatever in the hands of persons who are not British subjects, or

(v) of which the managing body is a foreign-controlled company, or the majority of the managing body are appointed by a foreign-controlled company.

(c) "interest" includes the interest of a mortgagee, and

57 & 58 Vict.,
c. 60.

(d) "persons qualified to be owners of British ships" has the same meaning as in section 1 of the Merchant Shipping Act, 1894.

(2) All provisions referring to a ship shall be read as referring also to a share in a ship.

57 & 58 Vict.,
c. 60.

3. No interest in a British ship registered in British India under the Merchant Shipping Act, 1894, shall without the previous consent in writing of the Governor General in Council be transferred to a foreign-controlled company or to persons other than persons qualified to be owners of British ships.

Restriction of transfer.

4. Whoever makes or attempts to make or abets the making of any transfer in contravention of the provisions of this Act, shall be punishable with imprisonment of either description which may extend to two years or with fine or with both.

Penalty.

5. For the purpose of determining whether any person, who is or who applies to be registered as owner or mortgagee of a British ship, is or represents a foreign-controlled company, the Governor General in Council may require any such person or in the case of a company, firm or association, the Secretary or other officer thereof to furnish such particulars as he may think necessary, and such person or officer shall be bound to furnish the particulars so required.

6. Where any person having an interest in a British ship registered in British India ceases to be a British subject or becomes a foreign-controlled company, such interest shall be liable to forfeiture.

THE INDIAN TREASURE-TROVE ACT, 1878.

(ACT VI OF 1878.)

[Passed on the 13th February, 1878.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1898	XII	Hidden Treasure, Madras	Rep., Act VI of 1878.
1878	VI	Treasure-Trove	Rep. in pt., Act XII of 1891. " " Act X of 1914.

An Act to amend the Law relating to Treasure-trove.

Preamble (a). WHEREAS it is expedient to amend the law relating to treasure-trove; It is hereby enacted as follows:—

Preliminary.

Short title. 1. This Act may be called The Indian Treasure-trove Act, 1878;

Extent. It extends to the whole of British India;

Commencement, [1] * * *

2. [Repeal of enactments.] Rep. by the Repealing and Amending Act, XII of 1891.

Interpretation-clause. 3. In this Act—

"Treasure." "Treasure" (b) means anything of any value hidden in the soil, or in anything affixed thereto:

Leg. Changes:—[1] Repealed by Act X of 1914.

Case-law:—(a) Applicability of Act and respective rights of owner of place and finder, 81 M. 397=4 M.L.T. 219. (b) Property not hidden is not treasure-trove and belongs to owner of land on which it is found, 81 M. 397=4 M.L.T. 219.

"Collector" means (1) any Revenue officer in independent charge of a district, and (2) any officer appointed by the Local Government to perform the functions of a Collector under this Act.

When any person is entitled, under any reservation in an instrument of transfer of any land or thing affixed thereto, to treasure in such land or thing, he shall, for the purposes of this Act, be deemed to be the owner of such land or thing.

Procedure on finding Treasure.

4. Whenever any treasure, exceeding in amount or value ten rupees, is found, the finder (a) shall, as soon as practicable, give to the Collector notice in writing—

(a) of the nature and amount or approximate value of such treasure ;

(b) of the place in which it was found ;

(c) of the date of the finding ;

and either deposit the treasure in the nearest Government Treasury, or give the Collector such security as the Collector thinks fit, to produce the treasure at such time and place as he may, from time to time, require.

* * * *

Penalties.

20. If the finder of any treasure fails to give the notice, or does not either make the deposit or give the security required by section 4, or alters or attempts to alter such treasure so as to conceal its identity, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in Her Majesty,

and he shall, on conviction before a Magistrate (b), be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

21. If the owner of the place in which any treasure is found abets, within the meaning of the Indian Penal Code, any offence under section 20, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in Her Majesty,

and he shall, on conviction before a Magistrate, be punished with imprisonment which may extend to six months, or with fine, or with both.

Case-law :—(a) *E.g.*, coolies finding in their employer's presence treasure in the course of felling tree, 27 M.L.J. 477=25 Ind. Cas. 640=15 Cr. L.J. 642. (b) Third class Magistrate cannot try offences under Act, 2 Weir 28 (No longer law.) (c) Liability of abettors under the Act, 1 Weir 919.

THE VACCINATION ACT, 1880.

(ACT XIII OF 1880.)

[Passed on the 9th July, 1880.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1880	XIII	Vaccination	Am., Act IV of 1914.

An Act to give power to prohibit inoculation, and to make the vaccination of children compulsory, in certain Municipalities and Cantonments.

Preamble WHEREAS it is expedient to give power to prohibit inoculation, and make the vaccination of children ^(a) compulsory, in certain municipalities and cantonments; It is hereby enacted as follows :

Short title 1. This Act may be called the Vaccination Act, 1880; and

Local extent. It shall apply only to such municipalities and cantonments situate in the territories administered respectively by the Lieutenant-Governors of the North-Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Assam, Ajmere and Coorg as it may be extended to in manner hereinafter provided.

Interpretation-clause. 2. In this Act, unless there is something repugnant in the subject or context,—

“municipal commissioners” : (1) the expression “municipal commissioners” means a body of municipal commissioners or a municipal committee constituted under the provisions of any enactment for the time being in force :

“parent” : (2) “parent” means the father of a legitimate child and the mother of an illegitimate child :

“guardian” : (3) “guardian” includes any person who has accepted or assumed the care or custody of any child :

“unprotected child” : (4) “unprotected child” means a child who has not been protected from small-pox by having had that disease either naturally or by inoculation, or by having been successfully vaccinated, and who has not been certified under this Act to be insusceptible to vaccination :

“inoculation” : (5) “inoculation” means any operation performed with the object of producing the disease of small-pox in any person by means of variolous matter :

“vaccination-circle” : (6) “vaccination-circle” means one of the parts into which a municipality or cantonment has been divided under this Act for the performance of vaccination :

Case-law :—(a) Inquiry by Tahsildar in reference to, 1 Weir 95, 96.

(7) "vaccinator" means any vaccinator appointed under this Act to perform the operation of vaccination, or any private person authorized [1] * * in manner hereinafter provided to perform the same operation, and includes a "Superintendent of vaccination":

(8) "vaccination-season" means the period from time to time fixed by the Local Government for any local area under its administration by notification in the official Gazette, during which alone vaccination may be performed under this Act.

3. A majority in number of the persons present at a meeting of the municipal commissioners specially convened in this behalf may apply to the Local Government to extend this Act to the whole or any part of a municipality; and thereupon the Local Government may, if it thinks fit, by notification published in the official Gazette, declare its intention to extend this Act in the manner proposed.

Any inhabitant of such municipality or part thereof who objects to such extension may, within six weeks from the date of such publication, send his objection in writing to the Secretary to the Local Government, and the Local Government shall take such objection into consideration. When six weeks from the said publication have expired, the Local Government, if no such objections have been sent as aforesaid, or (when such objections have been so sent) if in its opinion they are insufficient, may by like notification effect the proposed extension.

4. The Local Government may, [2] subject to the control [2] of the Governor General in Council, by notification in the local official Gazette, extend this Act to the whole or any part of a military cantonment.

5. The Local Government may, by notification in the official Gazette, withdraw any local area in a municipality, or, [2] subject to the control [2] of the Governor General in Council, any local area in a cantonment, from the operation of this Act.

6. In any local area to which the provisions of this Act apply, inoculation shall be prohibited; and

no person who has undergone inoculation shall enter such area before the lapse of forty days from the date of the operation, without a certificate from a medical practitioner, of such class as the Local Government may, from time to time by written order, authorize to grant such certificates, stating that such person is no longer likely to produce small-pox by contact or near approach.

Leg. Changes:—[1] The words "by the Local Government" were omitted by Act IV of 1914. [2] The words "subject to the control" were substituted for "with the previous sanction" by Act IV of 1914.

Case-law:—(a) Inoculation not an offence in itself, though this section prohibits the practice within the areas to which this Act is extended, L.B.R. (1898—1900) 545.

Vaccination-circles. 7. Every local area to which this Act applies shall be a vaccination-circle, or shall in manner hereinafter provided be divided into a number of such circles;

Vaccinators : one or more vaccinators (a) shall be appointed in manner hereinafter provided for each such circle ; and

Superintendent of vaccination. one or more Superintendents of vaccination shall be appointed in manner hereinafter provided for each such local area.

Private vaccinators. 8. The [1] Commissioner may by written license authorize private vaccinators to perform vaccination in any vaccination-circle, and may suspend or cancel any such license.

Unprotected children to be vaccinated. 9. When any unprotected child, having attained the age of six months, has resided for a period of one month during the vaccination-season in any local area to which the provisions of this Act apply, and has not at the expiration of such period attained the age, if a boy, of fourteen years, and if a girl, of eight years, the parent or guardian of such child shall take it, or cause it to be taken, to a vaccinator to be vaccinated, or send for a vaccinator to vaccinate it.

Vaccinator to vaccinate children, or deliver certificates of postponement. Such vaccinator shall vaccinate the child and deliver to its parent or guardian a memorandum stating the date on which the vaccination has been performed and the date on which the child is to be inspected in order to ascertain the result of the operation, or shall, if he finds such child in a state unfit for vaccination, deliver to its parent or guardian a certificate under his hand to the effect that the child is in a state unfit for vaccination for the whole or part of the current vaccination-season.

Inspection after vaccination. 10. The parent or guardian of every child which has been vaccinated under section 9 shall, on the date of inspection stated in the memorandum, take the child, or cause it to be taken, to a vaccinator for inspection, or get it inspected at his own house by a vaccinator : and

such vaccinator shall then append to the memorandum a certificate stating that the child has been inspected and the result of such inspection.

Procedure when vaccination is successful. 11. When it is ascertained at the time of inspecting a child under section 10 that the vaccination has been successful, a certificate shall be delivered by the vaccinator to the parent or guardian of such child to that effect, and such child shall thereafter be deemed to be protected.

Leg. Changes :—[1] The word " Commissioner " was substituted for " Local Government " by Act IV of 1914.

Case-law :—(a) Public servants, 6 M.H.C. Ap. 48 ; see 1 Weir 134.

12. When it is ascertained as aforesaid that the vaccination has been unsuccessful, the parent or guardian shall, if the vaccinator so direct, cause the child to be forthwith again vaccinated and subsequently inspected in manner hereinbefore provided.

Procedure when vaccination is unsuccessful.

13. A certificate granted under section 9 showing the unfitness of a child for vaccination shall remain in force for the period stated therein, and on the termination of that period, or, if that period terminates after the vaccination-season is over, when the next vaccination-season begins, the parent or guardian of such child shall take the child, or cause it to be taken, to a vaccinator to be vaccinated, or procure its vaccination at his own house by a vaccinator:

Procedure when child is unfit for vaccination.

Renewal of certificates of postponement. Provided that, if the child is still found to be in a state unfit for vaccination, the certificate granted under section 9 shall be renewed.

14. If the Superintendent of vaccination is of opinion that a child which has been three times unsuccessfully vaccinated is insusceptible of successful vaccination, he shall deliver to the parent or guardian of such child a certificate under his hand to that effect; and the parent or guardian shall thenceforth not be required to cause the child to be vaccinated.

Certificates of insusceptibility of successful vaccination.

15. The vaccination of a child shall ordinarily be performed with such lymph as may be prescribed by the rules to be made under this Act:

What lymph to be used.

Provided that,—

1st, if animal-lymph is so prescribed and the parent or guardian of any child desires that such child shall be vaccinated with human lymph, it shall be so vaccinated; and

2nd, if in any local area in which animal-lymph is procurable, human lymph is so prescribed, and the parent or guardian of any child desires that such child should be vaccinated with animal-lymph, and tenders to the vaccinator the amount of such fee, not exceeding one rupee, as may be fixed by such rules in this behalf, such child shall be so vaccinated.

16. No fee shall be charged by any vaccinator except a private vaccinator to the parent or guardian of any child for any of the duties imposed on such vaccinator by or under the provisions of this Act:

No fee to be charged except by private vaccinator.

Provided that it shall be lawful for a vaccinator to accept a fee for vaccinating a child by request of the parent or guardian elsewhere than in the circle for which such vaccinator is appointed.

Proviso.

17. The Superintendent of vaccination, in addition to the other duties imposed on him by or under the provisions of this Act, shall ascertain whether all unprotected children, under the age of fourteen years if boys, and under the age of eight years if girls, within the local

Duties of Superintendent of vaccination.

area under his superintendence have been vaccinated; and, if he has reason to believe that the parent or guardian of any such child is bound by the provisions hereinbefore contained to procure the vaccination of such child or to present it for inspection, and has omitted so to do, he shall personally go to the house of such parent or guardian, and there make enquiry, and shall, if the fact is proved, forthwith deliver to such parent or guardian, or cause to be affixed to his house, a notice (a) requiring that the child be vaccinated or (as the case may be) that it be presented for inspection, at a time and place to be specified in such notice.

Notice to parent or guardian neglecting to comply with Act.

18. If such notice is not complied with, the Superintendent of vaccination shall report the matter to the Magistrate of the district, or such Magistrate as the Local Government or the Magistrate of the district may from time to time appoint in this behalf; and the Magistrate receiving such report shall summon the parent or guardian of the child and demand his explanation, and shall, if such explanation is not satisfactory, make an order in writing directing such parent or guardian to comply with the notice before a date specified in the order.

Order by Magistrate when notice not complied with (b).

If on such date the order has not been obeyed, the Magistrate shall summon the parent or guardian before him, and, unless just cause or excuse is shown, shall deal with the disobedience as an offence punishable under section 22.

Procedure when order not obeyed.

The Magistrates appointed under this section shall, as far as is conveniently practicable, be natives of India, and not paid servants of the Government.

Magistrates to be non-official natives.

19. When this Act has been applied to any municipality or any part thereof, the municipal commissioners may, from time to time, make rules consistent with this Act for the proper enforcement of this Act within the limits to which it applies. Such rules shall be made in the manner in which, under the law for the time being in force, the [1]Municipal commissioners make rules or bye-laws for the regulation of other matters within the limits of the municipality, and shall, when confirmed by the [2] Commissioner and published in the official Gazette, have the force of law:

Power to make rules for municipalities.

Provided that the [2] Commissioner may at any time rescind or modify any such rule.

Leg. Changes:—[1] The word "Municipal" was inserted by Act IV of 1914. [2] The word "Commissioner" was substituted for "Local Government" by Act IV of 1914.

Case-law —(a) Failure to comply with notice for vaccination of child under this section not punishable under S. 7 of Burma Laws Amendment Act, 1900, 2 L.B.R. 279. (b) See 4 L.B.R. 12=8 Cr. L.J. 124.

Power to make rules for cantonments.

20. When this Act has been applied to any cantonment or any part thereof, the Local Government may, from time to time, subject to the control of the Governor General in Council, make such rules.

What rules under sections 19 and 20 may provide for.

21. The rules to be made for any local area under section 19 or 20 may, among other matters, provide for—

- (a) the division of such local area into circles for the performance of vaccination ;
- (b) the appointment of a place in each vaccination-circle as a public vaccine-station, and the posting of some distinguishing mark in a conspicuous place near such station ;
- (c) the qualifications to be required of public vaccinators and Superintendents of vaccination ;
- (d) the authority with which their appointment, suspension and dismissal shall rest ;
- (e) the time of attendance of public vaccinators at the vaccine-stations, and their residence within the limits of the vaccination-circles ;
- (f) the distinguishing mark or badge to be worn by them ;
- (g) the amount of fee chargeable by private vaccinators, and their guidance generally in the performance of their duties ;
- (h) the facilities to be afforded to people for procuring the vaccination of their children at their own houses ;
- (i) the grant and form of certificates of successful vaccination, of unfitness for vaccination or of insusceptibility of vaccination ;
- (j) the nature of the lymph to be used and the supply of a sufficient quantity of such lymph ;
- (k) the fee to be paid for vaccination with animal-lymph under section 15 ;
- (l) the fee to be paid to a public vaccinator for vaccinating a child beyond the vaccination-circle at the request of the parent or guardian of the said child ;
- (m) the preparation and keeping of registers showing—
 - the names of children born in such local area on or after the date of the application of this Act ;
 - the names of unprotected children born in such local area previous to the application of this Act, and who are, at the time this Act is applied, under the age of fourteen years if boys, and of eight years if girls ;
 - the names of unprotected boys and girls respectively under those ages brought within such local area at any time after the application of this Act and who have resided there for a month ;
 - the result of each vaccination or its postponement, and the delivery of certificates, if any ;
- (n) the assistance to be given by the municipal commissioners and municipal servants in the preparation of these registers, and in other matters ; and
- (o) the preparation of vaccination-reports and returns.

Punishment of offences. **22.** Whoever commits any of the undermentioned offences, ed offences (that is to say) :—

- (a) violates the provisions of section 6,
- (b) neglects without just excuse to obey an order made under section 18,
- (c) breaks any of the rules made under section 19 or 20, or
- (d) neglects without just cause to obey an order made under section 18 after having been previously convicted of so neglecting to obey a similar order made in respect of the same child,

shall be punished as follows (that is to say) :—

in the case of the offence mentioned in clause (a), with simple imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees, or with both ;

in the case of the offences mentioned in clauses (b) and (c), with fine which may extend to fifty rupees ; and,

in the case of the offence mentioned in clause (d), with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Municipal funds to receive fines and meet expenditure. **23.** The amount of all fees and fines realised, and the amount of all expenditure incurred, under this Act in any municipality shall respectively be credited to, and paid from, the municipal fund.

THE INDIAN VOLUNTEERS ACT, 1869.

(ACT XX OF 1869.)

[Passed on the 10th September, 1869.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1857	XXIII	Volunteer Corps	Rep., Act XIV of 1870.
1869	XX	Volunteers	Am., Act VI of 1909.

An Act to provide for the good order and discipline of Volunteer Corps, and to invest them with certain powers.

Preamble. WHEREAS many loyal subjects of Her Majesty have volunteered their services for the protection of life and property and the preservation of the peace, and have with the sanction of Government associated and enrolled themselves as Military Corps under the command of officers appointed for that purpose ; and it is expedient to provide for the good order and discipline of such

corps, and to invest their members with certain powers; It is hereby enacted as follows :—

Preliminary.

Short title. 1. This Act may be called "The Indian Volunteers' Act, 1869."

Extent of Act. 2. This Act shall extend to the whole of British India and (so far as regards British subjects) to the dominions of Native Princes and States in alliance with Her Majesty.

3. [Repeal of Act XXIII of 1857.] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

Definitions. 4. (1) "Magistrate" means, within the limits of the Presidency Towns, the Chief Presidency Magistrate, and without those limits a Magistrate of the first class who is a Justice of the Peace:

(2) volunteers shall be deemed to be on "actual duty"—

(a) when being trained or exercised either alone or with any portion of the regular forces, or

(b) when attached to or otherwise acting as part of or with any regular forces, or

(c) when serving in aid of the civil power; and

(3) "civil district" means a district as defined in the Code of Civil Procedure.

Formation and Dissolution of Volunteer Corps.

Formation of corps. 5. Corps of Volunteers may, with the sanction of the Governor General of India in Council, or of the Local Government, be formed in any part of British India or of the said dominions.

Certificate of Commanding Officer to be evidence of enrolment. 6. A certificate of enrolment in such corps, signed by the Commanding Officer thereof, shall be *prima facie* evidence of such enrolment.

Power to disband corps or remove members. 7. The Governor General of India in Council or the Local Government may disband any corps formed or enrolled under the provisions of this Act, or of Act No. XXIII of 1857, or remove from such corps any member thereof.

Power of Commanding Officer to strike volunteers off the rolls in certain circumstances. 7-A. (1) The Commanding Officer of a Volunteer Corps may strike off the rolls any volunteer, not being an officer of the Corps under his command, who has been absent without leave for not less than six months, or has quitted the Corps otherwise than in accordance with section 13, or has been classed as non-efficient for two consecutive years.

(2) Every volunteer so struck off the rolls shall be deemed to have been removed from the Corps.

Application of Army Act.

8. Every member of a corps of volunteers shall, for all military offences of which he shall be guilty whilst on actual duty or actual military service, be subject to the Army Act, so far as the same is applicable to officers and c. 8. consistent with the provisions of this Act.

Volunteers subject-
ed to Army Act, so
far as it applies to
officers.

Courts Martial.

9. General Courts Martial shall be convened and appointed by the Commanding Officer of the corps, with the sanction of the Local Government, for the trial of military offences of which any member of such corps shall be guilty whilst on actual duty.

Appointment of,
and sentences by,
General Courts Mar-
tial.

No sentence of such Court Martial shall be put into execution until after a report of the whole proceedings shall have been made to, and the sentence shall have been confirmed by, the Local Government.

The Local Government may commute any such sentence for a less punishment, or pardon the offender.

10. General Courts Martial shall consist of not less than nine members of the corps, and every member of the corps, whether an officer or not, shall be competent to sit and act as a member of such Court Martial.

General Courts
Martial of whom to
be composed.

11. Regimental Courts Martial may be convened by the Commanding Officer of the corps, and shall consist of not less than three members of the corps.

Regimental Courts
Martial.

12. The proceedings of Courts Martial convened under this Act shall be conducted according to the laws and customs applicable to Courts Martial held under the said Army Act, except so far as the same are inconsistent with the provisions of this Act.

Procedure of Courts
Martial held under
this Act.

Withdrawal from Corps.

13. Any person enrolled as a member of a corps of Volunteers, whether he shall have been elected or commissioned as an officer in such corps or not, may, except whilst on actual duty or actual military service, quit the corps upon giving to the Officer commanding the corps seven days' previous notice in writing of his intention so to do, or without such notice if the Commanding Officer of the corps shall consider it reasonable and allow him so to do.

Power to quit the
corps.

14. Every commission to any member of a corps of Volunteers appointing him an officer in such corps shall cease upon his retirement or dismissal from the corps.

Commissions to
officers to cease on
retirement or dis-
missal.

15. Every member of a corps of Volunteers who shall have received any arms, ammunition, accoutrements or uniform belonging to Government, or which shall have been furnished from the public stores or at the public expense, shall, upon his quitting such corps,

Delivery of arms
belonging to Govern-
ment by members
quitting the corps.

or upon his removal or dismissal therefrom,
or whenever he shall be required so to do by the Commanding Officer of the corps,

or whenever the corps shall be disbanded,
deliver up to the Commanding Officer or such person as he shall appoint to receive the same, all such arms, ammunition, accoutrements and uniform in good order and condition, reasonable wear thereof only excepted ;

and in default thereof he shall pay such sum of money as shall be adjudged by a Regimental Court Martial to be assembled for that purpose by the Commanding Officer of the corps. A copy of such adjudication, signed by the President of the Court Martial, shall be sent to the principal Court of original civil jurisdiction in the district in which the adjudication shall have been given, and shall be executed by such Court as if it were a decree for money under the Code of Civil Procedure.

Local Limits of Service.

16. No member of a corps or battalion of volunteers, other than naval volunteers, shall be bound, without his consent, to serve or proceed on duty beyond the limits of the civil district in which he was enrolled, or, where a corps or battalion consists of volunteers enrolled in more civil districts than one, beyond the limits of the territory comprised in those districts :
and

no member of a corps of naval volunteers shall be bound, without his consent, to serve or proceed on duty beyond the limits of the port to which the corps belongs, such port being construed to include the city or town after which the corps is named, and its suburbs, and the navigable rivers, channels and fairways leading thereto :

Provided that the Local Government or the Commissioner of the Division, or other authority to whom power in this behalf may be delegated by the Local Government, may exempt from service any particular corps or portion of a corps or any individual member or members of a corps by name. Such exemption may be whole or partial in respect either of time or of area, or of both, as the empowered authority may see fit to prescribe.

Rules.

17. The Commanding Officer of every corps of Volunteers may frame such general rules as he may think fit for regulating the times at which and the manner in which the duties of the corps and of the several members or detachments thereof shall be discharged.

Such rules, when sanctioned by the Local Government, shall be binding on the corps and on the several members thereof.

Penalties.

18. If any member of a corps of Volunteers, being warned for actual duty other than drill or parade, shall, without reasonable excuse, neglect to attend such duty, he shall be liable, upon conviction by a General Court Martial, to a fine not exceeding one hundred rupees, or to simple

dismissal from the corps, or to dismissal from the corps as unworthy to belong to it.

Not attending
drill or parade.

19. If any member of such corps shall without reasonable excuse neglect to attend drill or parade at such times as may be appointed for that purpose,

Other minor mili-
tary offence.

or shall be guilty of any neglect of duty or other military offence which in the judgment of the Commanding Officer of the corps will be sufficiently punished by a small fine,

he shall be liable to pay such fine, not exceeding fifty rupees, as a Regimental Court Martial shall impose.

20. If any member of such corps shall neglect or refuse to pay any fine to which he shall be sentenced by any Court Martial, within such time as shall be fixed by the Commanding Officer of the corps, he may be dismissed by the said Commanding Officer from the said corps; and every such dismissal shall be recorded and reported to the Local Government.

Punishment for
non-payment of fine.

21. Whoever assaults or resists, or abets within the meaning of the Indian Penal Code, any person in assaulting or resist- **XLV of 1860.**
ing any member of such corps in the discharge of his duty, shall be punishable, on conviction before a Magistrate, with fine not exceeding two hundred rupees, or with imprisonment for any term not exceeding six months, or with both.

Penalty for assault-
ing or resisting
Volunteers in dis-
charge of their duty.

22. In default of payment of any fine imposed by a Court Martial under this Act, a copy of the sentence of the Court Martial imposing the fine, signed by the President of such Court, may be sent to a Magistrate in the Presidency Town or the District in which the fine shall have been imposed, who shall thereupon cause the fine to be recovered as if he had himself imposed it.

Recovery of fines.

Fines imposed under section 21 may be recovered in the manner provided by the law for the time being in force for the recovery of fines imposed by Criminal Courts.

Powers of Volunteers.

23. Any member of a corps of Volunteers, whenever he may be in discharge of his duty as a member of the corps, and wheresoever he may then be, may disarm any person not being in Her Majesty's Military or Naval service or a Police-officer, found between sunset and sunrise in any public street, thoroughfare or other public place, armed with a sword, spear, gun or other warlike instrument, without a pass or license for that purpose from the Commissioner of Police or other officer authorized by Government to grant the same;

Power to disarm
persons;

and may also disarm any person found armed at any time contrary to law or to any order of Government in any public street, thoroughfare or other public place;

and to apprehend
and deliver to police.

and may also apprehend and deliver over to a Police-officer any person so found armed in order that he may be dealt with according to law ;

Forfeiture of weapons seized.

and the weapon so seized shall be forfeited to Government or otherwise dealt with according to law, or to the orders of Government.

24. Any member of such corps, whenever he is on duty, may prevent any disturbance of the public peace, and disperse any persons whom he may find assembled together to the number of five or more without reasonable cause between sunset and sunrise in any public street, thoroughfare or other public place in which such member of the said corps may be in the discharge of his duty ;

Power to prevent disturbances of the public peace ; to disperse unlawful assemblies ;

and may also apprehend any person reasonably suspected of having committed, or being about to commit, any offence against the State, or of having abetted within the meaning of the Indian Penal Code, or being about to abet, any other person in the commission of such

to apprehend certain suspected persons.

XLV of 1860.

offence ; and deliver him over to some Police-officer.

Miscellaneous.

25. Every mounted officer, and every mounted orderly of a corps of Volunteers, and every member of such corps, while he belongs to a troop of cavalry in such corps, shall be at liberty to keep one horse without being liable to pay in respect thereof any municipal or other tax imposed upon horses.

Exemption from horse-tax.

26. No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act * * * *, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends, nor after the expiration of three months from the accrual of the cause of suit or other proceeding.

Suits for things done in pursuance of this Act.

Supplemental.

27. (1) In case of actual or apprehended emergency (the occasion being first declared by the Governor General in Council and notified in the Gazette of India) the Governor General in Council may call out any corps or any portion of any corps of volunteers for actual military service.

Calling out of volunteer corps for actual military service.

(2) All members of any corps or portion of a corps so called out shall be bound, unless incapacitated by infirmity for military service, to assemble as the Governor General in Council may direct, and to proceed according to orders within the limits hereinbefore specified ; and, from the time of their corps or portion thereof being so called out, shall be deemed to be on actual military service :

Provided that the Local Government or the Commissioner of the Division, or other authority to whom power in this behalf may be delegated

by the Local Government, may exempt from service any particular corps or portion of a corps, or any individual member or members of a corps by name. Such exemption may be whole or partial in respect either of time or of area, or of both, as the empowered authority may see fit to prescribe.

(3) After a corps or portion of a corps of volunteers has been called out for actual military service, the corps or portion of a corps shall be deemed to be released from actual military service only after a notification in the Gazette of India declaring the occasion to have passed, and not sooner or otherwise :

Provided that the Governor General in Council may at any time discharge any such corps or portion of a corps from actual military service.

(4) Before a corps or portion of a corps of volunteers is released from actual military service, provision shall be made by the Government for the return of the volunteers present therewith to their homes.

Power to make
rules as to allow-
ances to volunteers.

28. (1) The Governor General in Council may make rules for—

(a) the making of payments to, and the provision of transport and supplies for, volunteers called out on actual military service ;
and

(b) the grant of pay, pensions, gratuities, allowances and rewards to them.

(2) The Governor General in Council may apply such rules or any part of them to any volunteers who may have been called out by any Magistrate or other authority in aid of the civil power :

and may in such case direct, any enactment notwithstanding, by whom the cost of the payments to be made and supplies to be provided under the rules shall be borne.

Appointment of
Local Government
to act with respect
to corps having
members enrolled in
more provinces than
one.

29. Where a corps consists of volunteers enrolled in territories subject to more Local Governments than one, the Governor General in Council may, by notification in the Gazette of India, declare what Local Government shall for all or any of the purposes of this Act be deemed to be the Local Government with respect to the corps.

[1] 30. Any member of the Territorial Force raised and maintained in pursuance of section 6 of the Territorial and Reserve Forces Act, 1907, who is attached to a corps of volunteers formed under this Act, shall be subject to the provisions of this Act during the period for which he is so attached.

Members of Terri-
torial Force subject
to Act during
attachment to
Volunteers.

**THE INDIAN WEIGHTS AND MEASURES OF
CAPACITY ACT, 1871.**

(ACT XXXI OF 1871.)

[Passed on the 30th October, 1871.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1870 1871	XI XXXI	Indian Weights and Measures ... Indian Weights and Measures of Capacity.	Rep., Act XII of 1873.

An Act to regulate the Weights and Measures of Capacity of British India.

Preamble. WHEREAS it is expedient to provide for the ultimate adoption of an uniform system of Weights and Measures of Capacity throughout British India; It is hereby enacted as follows :—

I,—Preliminary.

Short title. Local extent.

1. This Act may be called "The Indian Weights and Measures of Capacity Act, 1871," and extends to the whole of British India.

II.—Standards.

2. The primary Standard of Weight shall be called a Ser (a), and shall be a Weight of metal in the possession of the Government of India, equal, when weighed in a vacuum, to the weight known in France as the Kilogramme des Archives.

Units of Weights and Measures of Capacity.

3. The Units of Weight and of Measures of Capacity shall be—

for Weights, the said Ser ;

for Measures of Capacity, a measure containing one such Ser of water at its maximum density, weighed in a vacuum.

4. The Governor General in Council may, from time to time, by notification (b) in the Gazette of India, declare the magnitude and denominations of the Weights and Measures of Capacity, other than the said units, to be authorized under this Act :

Provided that every such Weight or Measure of Capacity shall be an integral multiple or integral sub-multiple of one of the units aforesaid.

The Governor General in Council may, in like manner, revoke such notification.

Case-law :—(a) Meaning of. 3 A. 404. (b) In the absence of such notification, no offence under S. 266, I.P.C., can be committed, 20 P.R. 1918, Cr.—36 P.L.R. 1914—15 Or. L.J. 11—22 Ind. Cas. 155.

S. 10 ACT XXXI OF 1871 (WEIGHTS & MEASURES, ETC.). *Weights*

Unless it be otherwise ordered in any such notification, the subdivisions of all such Weights and Measures of Capacity shall be expressed in decimal parts.

Districts how defined.

5. The Governor General in Council may, from time to time, by notification in the Gazette of India, define the limits of districts for the purposes of this Act.

Sub-districts how defined.

The Local Government may, from time to time, by notification in the official Gazette, define the limits of sub-districts for the purposes of this Act.

Primary standards to be provided.

6. The Governor General in Council may provide, for such districts as he thinks fit, proper primary standards and sets of the said authorized Weights and Measures of Capacity.

Such standards shall, for the purposes of this Act, be deemed the standards for such districts.

Local standards to be provided.

7. The Local Government may provide, for such sub-districts as it thinks fit, copies of such of the said authorized Weights and Measures of Capacity as shall be necessary to serve as local standards in such sub-districts.

Such local standards shall be deemed correct, until they are proved to be otherwise.

III.—Use of new Weights and Measures of Capacity.

Use of new Weights and Measures of Capacity in Government Offices, &c.

8. Whenever the Governor General in Council considers that proper standard Weights and Measures of Capacity have been made available for the verification of the Weights and Measures of Capacity to be used by any Government Office or Municipal Body or Railway Company, the Governor General in Council may, by notification in the Gazette of India, direct that, after a date to be fixed therein, all or any of the Weights and Measures of Capacity authorized as aforesaid shall be used in dealings and contracts by such Office, Body or Company; and may, in like manner, from time to time, alter or revoke such direction.

Contracts by Weight or Measure of Capacity.

9. After the date fixed in any notification under section 8, all dealings and contracts had and made by the Officers, Bodies or Companies, mentioned in such notification, for any work to be done or goods to be sold or delivered by Weight or Measure of Capacity shall, in the absence of a special agreement to the contrary, be deemed to be had and made according to the Weights or Measures of Capacity directed in such notification to be used by such Officers, Bodies or Companies.

IV.—Wardens.

Appointment of Wardens.

10. The Governor General in Council and the Local Government, respectively, shall appoint Wardens for the custody of the primary and local standards and sets of authorized Weights and Measures of Capacity hereinbefore mentioned.

The Governor General in Council, or the Local Government, respectively, may, at any time, suspend or remove any such Warden and appoint another.

Power to make rules. 11. The Governor General in Council may, from time to time, make rules consistent with this Act for regulating the following matters:—

- (a) The appointment of Wardens ;
- (b) The guidance of Wardens in all matters connected with the performance of their duties ;
- (c) The provision, replacement, custody and use of the standards ;
- (d) The method of verifying local standards and Weights, Weighing Machines and Measures of Capacity authorized under this Act, and Balances, and of certifying such verification : provided that such verification shall not be required to be made oftener than once in two years ;
- (e) The errors which may be tolerated, in Weights, Weighing Machines and Measures of Capacity authorized under this Act, and in Balances ;
- (f) The shapes, proportions and dimensions to be given to Weights, Weighing Machines and Measures of Capacity authorized under this Act, and to Balances, and the materials of which they may be made ;
- (g) Marking Weights and Measures of Capacity authorized under this Act with their several denominations ;
- (h) The conditions under which Government Offices, Municipal Bodies and Railway Companies shall be subject to inspection and verification of the Weights, Weighing Machines and Measures of Capacity authorized under this Act, and of the Balances used by them ;
- (i) The fees to be paid for verifying, correcting and certifying the verification of Weights, Weighing Machines and Measures of Capacity authorized under this Act, and of Balances.

Publication of rules. 12. Such rules shall be published in the Gazette of India.

Rules, when specially applied, to have force of law. And the Governor General in Council may, by notification in the Gazette of India, declare that, from and after a day to be named therein, all or any of the said rules shall come into force in respect of any Government Office, Municipal Body or Railway Company, and thereupon, to the extent specified in such notification, such rules or rule shall have the force of law.

Officers of Government and others to comply with rules. 13. All officers of Government, municipal officers, and officers and servants of Railway Companies shall comply with such rules so far as they concern them, and pay such fees as the said rules shall prescribe.

Warden may refuse to verify or correct things unfit. 14. The Warden may deface, or render incapable of use, or refuse to verify, correct, or mark, anything brought to him for verification or correction, which appears to him unfit for verification or correction.

15. Any of the powers and duties conferred and imposed by this Act on a Warden may be exercised and performed by any other officer whom the Local Government may, from time to time, appoint.

Exercise of any of Warden's powers.

16. Whoever knowingly counterfeits any mark used by a Warden under section eleven, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Counterfeiting Warden's marks.

17. The Local Government may, from time to time, prepare tables of the equivalents of Weights and Measures of Capacity, other than those authorized under this Act, in terms of the Weights and Measures of Capacity so authorized, and the equivalents so stated, after notification in the local official Gazette, shall be deemed the true equivalents.

Tables of equivalents.

THE WHIPPING ACT, 1909.

(ACT IV OF 1909.)

[Passed on the 22nd March, 1909.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1864	VI	Whipping	Rep., Act IV of 1909.
1900	V	Whipping	Am., Act XVII of 1914.
1909	IV	Whipping	

An Act to consolidate and amend the law relating to the punishment of whipping.

WHEREAS it is expedient to consolidate and amend the law relating to the punishment of whipping; It is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may be called the Whipping Act, 1909 (a); and

(2) It extends to the whole of British India, inclusive of British Baluchistan and the Santhal Parganas.

Whipping added to punishments described in Act XLV, 1860 (b). 2. In addition to the punishments described in section 53 of the Indian Penal Code, offenders are also liable to the punishment of whipping.

Case-law:—(a) Act highly penal and hence must be construed most favourably to the subject, 7 L.B.R. 63. (b) Act part of Penal Code and Cr. P.C., 7 B.L.R. 165; whipping in conviction for two offences, 22 P.R. 1872, Cr.; whipping when accused convicted of more than one offence, 5 M.H.C.R. Rul. XVIII; contents of judgment in case of whipping, 5 M. 158; whipping in addition to imprisonment, legality of, 5 B.H.C.R. 88; fine in lieu of whipping, 11 A. 308; imprisonment in lieu of whipping, period of, 21 A. 35; 2 Weir 449; sentence in lieu of whipping, Magistrate's power to

Offences punishable with whipping in lieu of other punishment.

3. Whoever commits (a) any of the following offences, namely :—

XLV of 1860.

- (a) theft, as defined in section 378 of the Indian Penal Code other than theft by a clerk or servant of property in possession of his master ;
- (b) theft in a building, tent or vessel, as defined in section 380 of the said Code ;
- (c) theft after preparation for causing death or hurt, as defined in section 382 of the said Code ;
- (d) lurking house-trespass, or house-breaking, as defined in sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section ;
- (e) lurking house-trespass by night, or house-breaking by night, as defined in sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section ;

may be punished with whipping in lieu of (b) any punishment (c) to which he may for such offence be liable under the said Code.

award, 2 P.L.R. 276; 11 P.R. 1901, Cr.; whipping under Police Act, 1 Weir 845; whipping in default of payment of fine, 5 P.R. 1886, Cr.; 1 P.L.R. 9; double sentence of whipping, 14 P.R. 1899, Cr.; whipping for attempt to commit offence, 1 Bur. 399; 531; whipping, discretion of Magistrate to remit, 1 L.B.R. 202; whipping not executed by escape of prisoner, liability after re-capture, M.H.C. Pro. Aug. 10, 1874; whipping not executed at proper time, liability of prisoner, Rat. Un. Cr. O. 136; whipping postponed to future date, validity of, 20 W.R. 72, Cr.; 54 P.R. 1866, Cr.; 2 Weir 446; 34 P.R. 1880, Cr.; 26 M. 465; Rat. Un. Cr. O. 803; 906; 7 Bur. 82; 31 P.R. 1878, Cr.; 2 Weir 446; A.W.N. (1881) 138; whipping, mode of whipping, 82 P.R. 1866, Cr.; 14 P.L.R. 64; flogging on back, legality of, 6 C.P.L.R. 34; 5 O.P. L.R. 31; whipping, fit state of prisoner to undergo, 3 M.H.C. App. '1; medical officer, nature of certificate, 17 M.L.J. 555=31 M. 84=7 Cr. L.J. 5=3 M.L.T. 31; Magistrate to whom case is referred, power to award whipping, Bom. Cr. Rg. 8—12—1870; jurisdiction of Court awarding whipping to revise it, 11 P.R. 1889, Cr.; appeal, lower Court's power to revise sentence of whipping after, 10 P.R. 1889, Cr.; District Magistrate's power of, to take up case in revision before appeal, 3 P.L.R. 170; infliction of whipping in appeal, 2 Weir 487; appeal against whipping order, C.H.O.R. 1864, 314; interference by District Magistrate in case of whipping, 39 P.R. 1901, Cr.; High Court's power to set aside illegal sentence of whipping, 2 Weir 447; commutation of sentence of whipping, 5 L.B.R. 22; whipping, maximum number of stripes to be inflicted, 4 Cr. L.J. 281.

Case-law :—(a) Abettor not liable to punishment of whipping, 7 L.B.R. 63=22 Ind. Cas. 147=15 Cr. L.J. 3=7 Bur. L.T. 99. (b) Competency of District Magistrate to alter sentence into one of whipping, Rat. Un. Cr. C. 131; double sentence of whipping illegal, 4 Bom. L.R. 929; fine alone with whipping, validity of, Rat. Un. Cr. O. 564; attempt to commit house breaking not punishable with whipping, 3 B.H.O.R. Cr. 87; procedure to be followed in pronouncing sentence of whipping, Rat. Un. Cr. C. 906; substitution of whipping for another punishment, 3 W.R. 86, Cr.; whipping and fine or imprisonment, validity of, 16 B. 357; whipping for offence under S. 382, I.P.O., legality of, 6 O.P.L.R. 36; illegal sentence of whipping carried into execution, 1 Weir 985; enhancement of sentence of whipping, 6 C.P.L.R. 36; whipping and another punishment for another similar offence, 8 P.R. 1885, Cr.; whipping and imprisonment for two offences, respective validity of, 1 Weir 934. (c) Meaning of, 16 B. 357.

Offences punishable with whipping in lieu of or in addition to other punishment.

4.(a) Whoever—

(a) abets, commits or attempts to commit, rape, as defined in section 375 of the Indian Penal Code ;

XLV of 1860.

(b) compels, or induces any person by fear of bodily injury, to submit to an unnatural offence as defined in section 377 of the said Code ;

(c) voluntarily causes hurt in committing or attempting to commit robbery, as defined in section 390 of the said Code ;

(d) commits dacoity as defined in section 391 of the said Code ;

may be punished with whipping in lieu of or in addition to (b) any other punishment to which he may for such offence, abetment or attempt be liable under the said Code.

Juvenile offenders when punishable with whipping.

5. (a) Any juvenile offender (d) who abets (e), commits or attempts to commit—

(a) any offence punishable under the Indian Penal Code, except XLV of 1860. offences specified in Chapter VI and in sections 153-A and 505 of that Code and offences punishable with death, or

(b) any offence punishable under any other law with imprisonment, which the Governor General in Council may, by notification in the Gazette of India, specify in this behalf,

may be punished with whipping in lieu of (f) any other punishment to which he may for such offence, abetment or attempt be liable.

Explanation.—In this section the expression “juvenile offender” (g) means an offender whom the Court, after making such enquiry (if any) as may be deemed necessary, shall find to be under sixteen years of age, the finding of the Court in all cases being final and conclusive.

6. Whenever any Local Government has, by notification in the official Gazette, declared the provisions of this section

Special provision as to punishment with whipping in frontier districts.

to be in force in any frontier district or any wild tract of country within the jurisdiction of such Local Government, any person who in such district or tract

of country after such notification as aforesaid commits any offence punishable under the Indian Penal Code with imprisonment for three years or XLV of 1860.

Case-law :—(a) Charge to set out liability to whipping, 2 Weir 267 ; section applies to juvenile offenders also, 7 B.H.C.R. 70, Cr. (b) Liability to whipping, 2 Weir 267 ; section subject to S. 391 (3), Cr. P.C., 4 Bom. L.R. 436 ; whipping and imprisonment and High Court's power in revision, 1 L.B.R. 362 ; power of Sessions Judge to suspend sentence of whipping, 5 M.H.C.R. App. 1. (c) Section does not supersede Ss. 3 and 4, Rat. Un. Cr. C. 78 ; juvenile offender, delivery of, to his parents, 3 L.B.R. 30 ; notification under section, 14 C.W.N. exxiv. (d) Meaning of, 6 A. 482 ; 8 B.H.C.R. Cr. 9 ; 9 C.P.L.R. 32, Cr. ; substitution of whipping for imprisonment, 3 P.R. 1884, Cr. ; whipping by way of school discipline, 8 B.L.R. 242. (e) Abettor whether punishable with whipping, 7 L.B.R. 63=7 Bur. L.T. 99. (f) Meaning of, 5 L.B.R. 22 ; if sentence of whipping carried out, no other punishment can be awarded even if sentence was inadequate, 15 Cr. L.J. 538. (g) Finding as to age final, 15 Cr. L.J. 538=24 Ind. Cas. 946=7 Bur. L.T. 292=8 L.B.R. 148.

White Phosphorus ACT V OF 1913 (WHITE PHOSPHORUS, &C.). S. 1

upwards, may be punished with whipping in lieu of any other punishment to which he may be liable under the said Code.

V of 1898.

Amendment of
section 392, Act V,
1898.

7. To section 392, sub-section (2), of the Code of Criminal Procedure, 1898, the words "and, in the case of a person under sixteen years of age, it shall not exceed fifteen stripes" shall be added.

8. [1]

* * * *

THE SCHEDULE.

[1]

* * * *

THE WHITE PHOSPHORUS MATCHES PROHIBITION ACT, 1913.

(ACT V OF 1913.)

[Passed on the 7th March, 1913.]

An Act to prohibit the importation, manufacture and sale of matches made with white phosphorus.

WHEREAS it is expedient to prohibit the importation, manufacture and sale of matches made with white phosphorus; It is hereby enacted as follows :—

Short title, extent
and commencement.

1. (1) This Act may be called the White Phosphorus Matches Prohibition Act, 1913.

(2) It extends to the whole of British India; and

(3) It shall come into force on the first day of July, 1913, with the exception of section 6, which shall come into force on the first day of July, 1914.

Definition.

2. In this Act, "white phosphorus" means the substance commonly known as white or yellow phosphorus.

VIII of 1878.

Prohibition of im-
portation by addition
to section 18, Act
VIII of 1878.

3. To section 18 of the Sea Customs Act, 1878, the following clause shall be added, namely :—

"(g) matches made with white phosphorus."

Prohibition of use
of white phosphorus
in manufacture of
matches.

4. (1) No person shall use white phosphorus in the manufacture of matches.

(2) Any person who uses, or permits the use by any person under his control of, white phosphorus in the manufacture of matches, shall be punishable with fine which may extend to two hundred rupees.

XII of 1911.

Power of Inspector
of Factories to take
samples of material
used in manufacture.

5. (1) Every person who manufactures matches shall allow an Inspector of Factories appointed under the Indian Factories Act, 1911, at any time to take for analysis sufficient samples of any material in use, or mixed for use, in such manufacture :

Leg. Changes :—[1] Repealed by Act XVII of 1914.

§. 2 ACT VIII OF 1912 (WILD BIRDS AND ANIMALS, ETC.) **Wild Birds**

Provided that any such person may, at the time the sample is taken, and on providing the necessary appliances, require the Inspector to divide the sample so taken into two parts, and to mark, seal and deliver to him one part.

(2) Any person who refuses to permit any such Inspector of Factories as aforesaid to take a sample, in accordance with the provisions of sub-section (1), shall be punishable with fine which may extend to two hundred rupees.

6. (1) No person shall sell, or offer or expose for sale, or have in his possession for the purposes of sale, any matches made with white phosphorus.

(2) Any person who contravenes the provisions of sub-section (1) may, on complaint to a *Presidency Magistrate, Sub-divisional Magistrate or Magistrate of the first class*, be ordered to forfeit any such matches in his possession, and any matches so forfeited shall be destroyed or otherwise dealt with as the Magistrate may direct.

THE WILD BIRDS AND ANIMALS PROTECTION ACT, 1912.

(ACT VIII OF 1912.)

[*Passed on the 18th September, 1912.*]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1887 1912	XX VIII	Wild Bird's Protection ... Wild Birds and Animals Protection.	Rep., Act VIII of 1912. Am., Act XVII of 1914.

An Act to make better provision for the protection and preservation of certain wild birds and animals.

WHEREAS it is expedient to make better provision for the protection and preservation of certain wild birds and animals ; It is hereby enacted as follows :—

Short title and extent. 1. (1) This Act may be called the Wild Birds and Animals Protection Act, 1912 ; and

(2) It extends to the whole of British India, including the British Baluchistan, the Sonthal Parganas and the Pargana of Spiti.

Application of Act. 2. (1) This Act applies, in the first instance, to the birds and animals specified in the Schedule, when in their wild state.

(2) The Local Government may, by notification in the local official Gazette, apply the provisions of this Act, to any kind of wild bird or animal, other than those specified in the Schedule, which, in its opinion, it is desirable to protect or preserve.

Wild Birds Act VIII OF 1912 (WILD BIRDS AND ANIMALS, ETC.). S. 3

3. The Local Government may, by notification in the local official Gazette, declare the whole year or any part thereof to be a close time throughout the whole or any part of its territories for any kind of wild bird or animal to which this Act applies or for female or immature wild birds or animals of such kind; and, subject to the provisions hereinafter contained, during such close time, and within the areas specified in such notifications, it shall be unlawful—

- (a) to capture any such bird or animal, or to kill any such bird or animal which has not been captured before the commencement of such close time;
- (b) to sell or buy, or offer to sell or buy, or to possess, any such bird or animal which has not been captured or killed before the commencement of such close time, or the flesh thereof;
- (c) if any plumage has been taken from any such bird captured or killed during such close time, to sell or buy, or offer to sell or buy, or to possess, such plumage.

4. (1) Whoever does, or attempts to do, any act in contravention of section 3, shall be punishable with fine which may extend to fifty rupees.

(2) Whoever, having already been convicted of an offence under this section, is again convicted thereunder shall, on every subsequent conviction, be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

5. (1) When any person is convicted of an offence punishable under this Act, the convicting Magistrate may direct that any bird or animal in respect of which such offence has been committed, or the flesh or any other part of such bird or animal shall be confiscated.

(2) Such confiscation may be in addition to the other punishment provided by section 4 for such offence.

6. No Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try any offence against this Act.

7. Where the Local Government is of opinion that, in the interests of scientific research, such a course is desirable, it may grant to any person a license, subject to such restrictions and conditions as it may impose entitling the holder thereof to do any Act which is by section 3 declared to be unlawful.

8. Nothing in this Act shall be deemed to apply to the capture or killing of a wild animal by any person in defence of himself or any other person, or to the capture or killing of any wild bird or animal in *bona fide* defence of property.

9. [1] * * * *

Leg. Changes :—[1] Repealed by Act XVII of 1914.

Case-law :—(a) Rules under Act of 1887 not superseded by new rules under Act VIII of 1912, 8 Bur. L.T. 20=16 Cr. L.J. 550=29 Ind. Cas. 822; old rules to be interpreted by sections of old Act, *ibid.*; burden of proof, *ibid.*

THE SCHEDULE.

- (i) Bustards, ducks, floricans, jungle fowl, partridges, peafowl, pheasants, pigeons, quail, sand-grouse, painted snipe, spur-fowl, wood-cock, herons, egrets, rollers, and king-fishers.
- (ii) Antelopes, asses, bison, buffaloes, deer, gazelles, goats, hares, oxen, rhinoceroses and sheep.

THE WORKMEN'S BREACH OF CONTRACT
ACT, 1859.

(ACT XIII OF 1859.)

[Passed on the 4th May, 1859.]

*An Act to provide for the punishment of breaches of contract by
Artificers, Workmen and Labourers in certain cases.*

WHEREAS much loss and inconvenience are sustained by manu-
facturers, tradesmen^(b) and others^(c) in the several
Presidency-towns of Calcutta, Madras and Bombay
and in other places^(d), from fraudulent^(e) breach of contract on the part
of artificers, workmen and labourers who have received money in advance
on account of work which they have contracted to perform; and whereas
the remedy by suit in the Civil Courts for the recovery of damages is
wholly insufficient, and it is just and proper that persons guilty of such
fraudulent breach of contract should be subject to punishment; It is
enacted as follows:—

Complaint to
Magistrate if work-
man neglect to
perform work for
which he has
received advance.

1. When any artificer, workman or labourer^(f)
shall have received from any master or em-

Case law:—(a) Scope and object of Act, 3 P.L.R. 291=11 P.R. 1903, Cr.; 28 M. 37; 7 M. 100=1 Weir 690; 28 P.R. 1904, Cr.; 3 L.B.R. 33 (40); 1 Weir 694; 1 Weir 693; 1 Bom. L.R. 523; 36 C. 917; U.B.R. (1909), 2nd Qr. W.B. of C. Act, p. 1; 19 Cr. L.J. 580 (F.B.)=15 Ind. Cas. 996=5 Bur. L.T. 133=6 L.B.R. 89; remedy under Act additional one, B.H.C. Pri. Jud. 1874; construction of Act, 28 M. 37; 7 M.H.C.R. App 30=1 Weir 690; 1 Weir 670; act being penal must be construed strictly, 1 Weir 692, 693; 9 P.R. 1910, Cr.=11 Cr.L.J. 329; 14 Bom.L.R. 956; 6 Bom.L.R. 255; care to be exercised in exercising powers under the Act, 12 Bom. L.R. 135; power to take proceedings under, 35 A. 143; requirements to make Act applicable, 16 M.L.T. 235=(1914) M.W.N. 651=27 M.L.J. 392=15 Cr. L.J. 651=25 Ind. Cas. 979. (b) Preamble cannot be construed as limiting operation of Act to private manufacturers, U.B.R. (1909), 2nd Qr. W.B. of C. Act, p. 1. (c) Must be construed *ejusdem generis*, 28 P.R. 1904, Cr. (d) For construction, see 3 P.L.R. 281=11 P.R. 1902, Cr. (e) Whether fraud a condition precedent to enquiry under the Act, see 11 A. 262; 16 B. 368; 8 W.R. Cr. 69; 36 C. 917. (f) Words refer to occupation of manual labour, 28 P.R. 1904, Cr.; labourer may be skilled or unskilled, 8 W.R. 6, Cr.; common cooly labour, 8 W.R. Cr. 6; artificer, meaning of, 28 P.R. 1904, Cr.; *Persons held to be*:—workman in rubber plantation, 3 L.B.R. 33; silk spinner, 14 W.R. 29, Cr.; partaker in work, Rat. Un. Cr. O. 204; cooly in Assam, 8 W.R. 6, Cr.; picture copyist, 28 P.R. 1904, Cr.; head carpenter, 7 L.B.R. 82=15 Cr. L.J. 235=23 Ind. Cas. 187. *Persons held not to be*:—actor, 28 P.R. 1904, Cr.; musician in a band, 38 M. 551=16 Cr. L.J. 629=30 Ind. Cas. 453; temple servants, 1 Weir 689; domestic or personal servants 12 W.R. Cr. 26; 3 B.L.R. A. Cr. 39; 20 P.R. 1876; 1 Weir 688, 689; 7 S.L.R.

ployer (a) resident (b) or carrying on business (c) in any Presidency town (d), [1] * * * * or from any person acting on behalf of such master or employer, an advance of money (e) on account of any work (f) which he shall have contracted to perform, or to get performed by any other artificers, workmen or labourers, if such artificer, workman or labourer (g) shall wilfully and without lawful or reasonable excuse (h) neglect or refuse to perform or get performed such work according to the terms of his contract, such master or employer or any such person as

100; elephant driver, 8 C.L.R. 254; agriculturist, 7 B. 379; 38 P.R. 1914, Cr.; third parties, 1 Weir 694; surety, 1 Bom. L.R. 523; co-parcener, 1 Weir 693; coolie sirdar, 6 O.L.J. 180; 1 Weir 678; 22 M.L.T. Jour. 54; mere contractor, 198 P.L.R. 1905; see 9 Bur. L.T. 108=17 Cr. L.J. 398; sub-contractor, 10 B. 96; kulkarni, 2 Bom. L.R. 801; contracting bricklayer, 7 M. 100=1 Weir 690; carriers, 1 Weir 690; 13 M. 351=1 Weir 691; Sind Sadar Court Cr. Rg. 120 of 1898; suppliers, 7 M.H.C.R. App. 30=1 Weir 690; 4 B.L.R. App. 1; 1 Weir 691.

Leg. Changes:—[1] Repealed by the Repealing Act, 1874 (XVI of 1874).

Case-law:—(a) Government whether, 3 L.B.R. 33; contractor whether, 13 M. 351=1 Weir 691; 1 Weir 690; broker or middleman not an employer, 14 Bom. L.R. 956=1 Bom. Cr. Cas. 200. (b) Secretary of State whether, in India, 3 L.B.R. 33. (c) Business must be solely for benefit of others, 3 L.B.R. 33; whether Government carrying on business, 3 L.B.R. 33; but see U B.R. (1909), 2nd Qr., W.B. of C. Act, p. 1. (d) Extension of Act under S. 5, 12 C.W.N. 869=8 Cr. L.J. 134=8 O.L.J. 312; 3 P.L.R. 281=11 P.R. 1902, Cr. (e) Money advance necessary to create obligation under Act, 1 Weir 692, 693; 4 Cr. L.J. 200=3 L.B.R. 187; advance of grain and money, 8 M. 294=1 Weir 701; paddy taken in lieu of money, 1 Weir 693; gold given as material to be worked up not an advance of money, 1 Weir 692; coins given to be worked up whether advance, 1 Weir 693, *contra* 6 M.H.C.R. App. 24=1 Weir 701; previous debt no advance, 1 Weir 684; 9 B.H.C.R. 171; 1 Weir 680; Sind Sadar Court Cr. Rg. 135, dated 12-11-1898; 1 Weir 685; loan no advance, see 16 B. 368; 7 M.H.C.R. App. 30; 8 Ind. Cas. 123; 1 Weir 681; 9 P.R. 1910, Cr.=12 P.W.R. 1910, Cr.=5 Ind. Cas. 914=11 Cr. L.J. 329; Rat. Un. Cr. C. 754; 23 M. 206; 7 S.L.R. 100; advance in the nature of debt, applicability of Act to, 13 Bom. L.R. 548=11 Ind. Cas. 586=12 Cr. L.J. 402; advance made from time to time, Sind Sadar Court Cr. Rg. 1 of 1903; joint advance to labourers, 2 Bom. L.R. 545; Sind Sadar C. Cr. Rg. 1, dated 23-10-1902; Sind Sadar Court Cr. Rg. 7, dated 23-1-1903. (f) Meaning of, 1 Weir 681; 1 Weir 693; Act not applicable if advance was not on account of work, 1 Weir 684; "*Advances held to be not on account of work,*" e.g., advance on account of loan, 7 M. 131=1 Weir 685; 3 A. 744; 4 Cr. L.J. 200=3 L.B.R. 187; 7 M.H.C.R. App. 30=1 Weir 680; Rat. Un. Cr. C. 754; 23 M. 203=1 Weir 687; 15 Cr. L.J. 384=23 Ind. Cas. 752; advance really a deposit, 1 Weir 681; advance on account of marriage, 1 Weir 683, 684; advance on account of entering into contract of service, 1 Weir 682, 684; advance for purchase of stamp, 1 Weir 684; *Advances held to be on account of work,* e.g., advance to be liquidated by performance of work, 7 M. 131=1 Weir 685; 1 Weir 687; 23 M. 203; 27 M.L.J. 616; 14 Cr. L.J. 400=20 Ind. Cas. 224; 10 A.L.J. 468; agreement to pay off advance by delivering ballast creating no relationship of labourer and employer, 2 P.R. 1916, Cr.=3 P.W.R. 1916, Cr.=32 Ind. Cas. 678=17 Cr. L.J. 86. (g) Contract simply to supply labour not within Act, 1 Weir 676; 1 Weir 678; 1 Weir 679=8 M. 379; 1 Weir 675=3 M.H.C.R. App. 25; 1 Weir 675=1 M. 280; contract to supply cooly and keep them at work within Act, *ibid*; nature and extent of work need not be specified, 1 M. 290=1 Weir 675; agreement to convey clay within the Act, 16 M. L.T. 235=27 M.L.J. 392; test to enforceability of contract under Act, 1 Weir 677; contractor must himself be a workman, U B.R. (1903), 4th Qr., p. 3; contract to work for 12 years, 15 Or. L.J. 384=23 Ind. Cas. 752; to contract prescribing penalty for non-performance, Act does not apply, 38 P.R. 1914, Cr. (h) Meaning of, 36 C. 917; excuse to have reference to circumstances of occurrence of breach, 11 M. 332=1 Weir 672; interference of Magistrate to what cases limited, 16 B. 368; proof of wilfulness of breach necessary, Sind Sadar Court Cr. Rg. 14 of 1903; reasonable excuse, 2 Bom. L.R. 801; Sind Sadar Court Cr. Rg. 9, dated 22nd December 1902; if workmen told not to do any work case taken away from this Act, U.B.R. (1914), 2nd Qr. 18=25 Ind. Cas. 990=15 Cr. L.J. 662.

S. 2 ACT XIII OF 1859 (WORKMEN'S BREACH, ETC.). **Workmen's**

aforsaid may complain ^(a) to a Magistrate of Police ^(b), and the Magistrate shall thereupon issue a summons or a warrant, as he shall think proper ^(c), for bringing before him such artificer, workman or labourer and shall hear and determine the case.

2. ^(d) If it shall be proved ^(e) to the satisfaction of the Magistrate that such artificer, workman or labourer has received money ^(f) in advance from the complainant on account of any work, and has wilfully and without lawful or reasonable excuse neglected or refused to perform or get performed the same according to the terms of his contract, the Magistrate shall, at the option ^(g) of the complainant, either order such artificer, workman or labourer to repay ^(h) the money

Magistrate may order repayment of advance or performance of contract.

Case-law :—(a) Jurisdiction to institute proceedings under the Act, 17 P.R. 1896, Cr.; 25 C. 637; Sind Sadar Court Ruling Cr. 11 of 1902; 15 P.W.R. 1910=12 P.R. 1910, Cr.=6 Ind. Cas. 618; 11 Cr. L.J. 380; fact of employer residing or carrying on business gives jurisdiction, 10 S.L.R. 56=17 Cr. L.J. 308=25 Ind. Cas. 484; jurisdiction when contract in British territory to be performed in foreign territories, 1 Weir 671; 0 M. 21=1 Weir 671; 16 M.L.T. 303; contract in foreign territories, labour in British territory, 7 M. 354=1 Weir 672; delay in making complaint, 16 M. 342=1 Weir 672; 7 L.B.R. 35=20 Ind. Cas. 228=14 Cr. L.J. 404=6 Bur. L.T. 108 (24 M. 660; 6 L.B.R. 89, *F.*); Act by whom to be put in motion, 11 A.L.J. 117=18 Ind. Cas. 885=14 Cr. L.J. 133=35 A. 143; jurisdiction after expiration of term or completion of work, 6 L.B.R. 89. (b) Meaning of, 25 C. 637; other Magistrates to be specially empowered, Rat. Un. Cr. C. 701; Magistrate competent to entertain complaints, 4 M.H.C.R. App. 64; 25 C. 637. (c) Duty of Magistrate before issue of process, 17 P.R. 1896, Cr.; Magistrate cannot refuse to issue process, if reasonable grounds be made out, 17 P.R. 1896, Cr.; discretion when allegation utterly trivial, 17 P.R. 1896, Cr.; execution of warrants outside local jurisdiction, 17 P.R. 1896, Cr.; applicability of S. 83, Cr. P.C., 20 M. 235=2 Weir 40; 20 M. 457; 20 A. 124; 17 P.R. 1896, Cr.; 33 P.R. 1898, Cr.; 33 B. 22=6 Bom. L.R. 255=1 Ind. Cas. 378; no discretion to refuse to execute warrants, 11 P.R. 1898, Cr.; arrest without warrant, M.H. C. Pro No. 436 of 14 3 1879. (d) To make Act applicable relation must be of labourer and employer of labour, 9 Bur. L.T. 108=17 Cr. L.J. 398=35 Ind. Cas. 830; limitation, effect of, 11 M. 332; 16 M. 347; 28 M. 37; but see Rat. Un. Cr. C. 874; promise to pay balance after settling original claim, enforceability of, under this Act, Sind Sadar Court Cr. Rg. 81, dated 15 12-1903; re-consideration of order, Rat. Un. Cr. C. 537; appeal, 1 Weir 694; revision under S. 439, Cr. P.C., 18 W. R. 53, Cr.; 35 C. 1036-N.; Sind Sadar Court Cr. Rg. 11 of 27-8-1902; contract upheld against weight of evidence, 35 C. 1035=9 Cr. L.J. 187; withdrawal of complaint, 24 M. 660; transfer, Sind Sadar Court Cr. Rg. 11 of 27-8-1902; submission of calendar, 7 M.H.C.R. App. 1; in case of several contracts, each defendant to be proceeded against separately, 1 Weir 707; *autrefois convict*, 21 C. 262; dismissal of successive complaints, 11 C.W.N. 247; Sind Sadar Court Cr. Rg. 10 of 23-10-1902. (e) Offence not summarily triable, 33 B. 22; 33 B. 25=10 Bom. L.R. 1126=1 Ind. Cas. 387=8 Cr. L.J. 409; U.B.R., (1902) 3rd Qr., W. B. C. Act, p. 1; 2 L.B.R. 163; 1 Weir 696; 6 S.L.R. 165; 5 P.R. 1912, Cr.=13 Cr. L.J. 194, *contra*, 11 A. 262; 1 Weir 694; 4 M. 234=1 Weir 695; mere admission of liability whether sufficient to justify order without further enquiry, Sind Sadar Court Cr. Rge. 2 of 1903, 14 of 1903, 1 of 1903; trial, procedure at, 27 C. 131=4 C.W.N. 201; U. B.R. (1902), 1. (f) When the failure to perform contract amounts to cheating, 1 Weir 677; inapplicability of section when stores received as advance, 23 P.R. 1914, Cr.=16 Cr. L.J. 608=25 Ind. Cas. 515. (g) Option of complainant not to be disregarded, 1 Weir 703=Crim. Rev. C. 109 to 110 of 1897; 28 M. 37=1 Weir 671 (a); see hereon, 6 L.B.R. 89=13 Cr. L.J. 550 (F.B.). (h) Power to order delivery of jewel, 3 M.L.T. 292=7 Cr.L.J. 369; order for repayment after expiry of time agreed, 12 C.W.N. 869=8 Cr. L.J. 134=8 C.L.J. 312 (16 M. 347, *F.*); but see 11 C.W.N. 247=5 Cr. L.J. 66; expiry of period during pendency of case, 4 L.B.R. 270 (11 C.W.N. 247, *Diss.*); order for immediate payment of advance not illegal, 1 Weir 699; fixing time for repayment not warranted, Rat. Un. Cr. C. 418; order directing payment without specifying any time bid for uncertainty, 1 Weir 696; order for repayment of sum advanced not ascertained bad, B.H. C. Cr. R. No. 10 of 1900.

advanced, or such part ^(a) thereof as may seem to the Magistrate just and proper, or order ^(b) him to perform, or get performed, such work according to the terms of his contract^(c); and if such artificer,

Penalty if workman fail to comply with order.

workman or labourer shall fail to comply with the said order, the Magistrate may sentence him to be imprisoned with hard labour for a term not exceeding three months^(d), or, if the order be for the repayment of a sum of money, for a term not exceeding three months or until such sum of money shall be sooner repaid ^(e): Provided that no such order for the repayment of any money shall, while the same remains unsatisfied, deprive the complainant of any civil remedy ^(f) by action or otherwise which he might have had but for this Act.

Case law :—(a) No compensation for part performance of contract, 1 Weir 698 = 4 M.H.O.R. App. 67; order for refund when contract performed only partly, 4 M.H.C.R. App. 67; compensation under S. 560, Cr. P.O., B.H.C. Cr. R. 10 of 1892; compensation under S. 250, Cr. P.O., 4 O.W.N. 253; order for payment of expenses of suit when illegal, Rat. Un. Cr. C. 625; Court-fee on petition of complaint, order for payment of, illegal, 33 B. 92; Sind Sadar Court Cr. Rg. 71, dated 24-6 1898.; refund of stamp duty and process fees must be passed, 1 Weir 697; but see Sind Sadar Court Cr. Rg. dated 15-8-1908; writing fees not coming under Act, 1 Weir 697; proceedings under, nature of, 6 Bom. L.R. 255; U.B.R. (1909) 2nd Qr. W.R.C.A. p. 1; 2 L.B.R. (1903-1904) 300; 7 S.L.R. 100 = 15 Cr. L.J. 383 = 23 Ind. Cas. 751 (33 B. 25, R.). (b) Magistrate to pass only one order, 9 Bom. L.R. 209; 12 A.L.J. 678 = 15 Cr. L.J. 592 = 25 Ind. Cas. 344; alternative order, bad, 9 Bom. L.R. 209; 23 P.R. 1913, Cr.; S. 2 applicable only if at the date of complaint, work is incomplete, 28 M. 37 = 1 Weir 671 = 2 Cr. L.J. 149; applicability of Act when work completed through other agencies before lodging complaint, 1 Weir 670; 1 Weir 671 (a) = 28 M. 37 = 2 Cr. L.J. 149; Sind Sadar Court Cr. Rg. 53, dated 28-10-1904; 8 P.R. 1917, Cr.; order directing performance of work after period fixed in contract, illegal, 8 Ind. Cas. 163. (c) Strict compliance with terms necessary, 1 Weir 704; terms of contract should be ascertained, 12 Bom. L.R. 185 = 5 Ind. Cas. 863 = 11 Cr. L.J. 273; time essence of contract, 1 Weir 704, 705; Sind Sadar Court Cr. Rg. 16, dated 19th February 1903; 1 Weir 706; time not essence of contract, 1 Weir 705; 12 A.L.J. 490 = 15 Cr. L.J. 599 = 25 Ind. Cas. 351 (35 O. 1028, F.); contract not within scope of Act, U.B.R. (1903) 4th Qr. p. 3; 2 Bom. L.R. 801; 1 Weir 670; 28 M. 37; 8 W.R. Cr. 69; 1 Weir 68 = 7 M.H.O.R. App. 80; 8 Ind. Cas. 123; 4 Cr. L.J. 200 = 3 L.B.R. 187; 9 B.H.C.R. 171; 16 B. 368; 17 P.R. 1890, Cr.; 3 A. 744; 1 Weir 681, 682, 683, 691; 4 B.L.R. App. 1; 7 M.H.O.R. App. 12; 1 Weir 688, 689 = 13 M. 351; 1 Weir 676; 1 Weir 684; 28 P.R. 1908, Cr. = 9 Cr. L.J. 107; 1 Weir 678; Sind Sadar Court Cr. Rg. 81, dated 15-12 1903; contracts enforceable under Act, 1 Weir 706; 686; 3 M.H.O.R. App. 25 = 1 Weir 675; 8 M. 379 = 1 Weir 679; 16 B. 368; 14 W.R. 29, Cr. (but see 18 W.R. 53, Cr.); 1 Weir 707; 687; 7 M. 131 = 1 Weir 685; 23 M. 203; M.H.C. Pro. 18-1-1884; 9 Bom. L.R. 362; 12 A. L.J. 152 = 23 Ind. Cas. 135 = 15 Cr. L.J. 233. (d) Mere breach of contract no offence, 16 B. 368; what constitutes offence under Act, 28 M. 37; 24 M. 660 = 1 Weir 673; 6 Bom. L.R. 255; interval necessary for obeying Magistrate's order, 35 C. 1036-N. = 9 Cr. L.J. 188; 21 O. 262; Sind Sadar Court Cr. Rg. 120 of 1908; punishment when no opportunity given illegal, *ibid*; 6 M.H.O.R. App. 24 = 1 Weir 701; simultaneous order, bad, 4 B.H.C. 37; Rat. Un. Cr. C. 375, 380; order without notice to the accused, harsh, 1 Weir 703; defendant's statement of his inability to work immaterial, 5 M. 376; fixing time for repayment of advance, Sind Sadar Court Cr. Rg. 87, dated 13th May 1903; Rat. Un. Cr. C. 418; application for issue of warrant for payment, Sind Sadar Court Cr. Rg. 14, dated 15th Feb. 1903; no imprisonment after expiry of contract, 12 O.W.N. 869 = 8 Cr. L.J. 134 = 8 C.L.J. 312; period of imprisonment exceeding period of contract, 35 C. 1035 = 9 Cr. L.J. 187. (e) Form of order, 1 Weir 699; 61 P.L.R. 1914 = 22 P.W.R. 1914, Cr. = 15 Cr. L.J. 423 = 24 Ind. Cas. 159 (23 P.R. 1913, Cr., F.); order passed under S. 2 (1), part (1) or part (2) not appealable, 7 S.L.R. 80 = 15 Cr. L.J. 372 = 23 Ind. Cas. 740 (33 B. 26; 6 S.L.R. 165; 9 O. 878, R.); 18 O.W.N. 1271 = 15 Cr. L.J. 697 = 26 Ind. Cas. 145. (f) Imprisonment, no bar to civil remedy, 2 M.H.O.R. 427 = 11 M. 382; 28 M. 37 = 1 Weir 671 (a) = 6 Cr. L.J. 149.

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3. When the Magistrate shall order any artificer, workman or labourer to perform or get performed any work (a) according to the terms of his contract, he may also at the request of the complainant require such artificer, workman or labourer to enter into a recognizance with sufficient security for the due performance of the order; and, in default of his entering into such recognizance or furnishing such security to the satisfaction of the Magistrate, may sentence him to be imprisoned with hard labour for a period not exceeding three months.

4. The word "contract," as used in this Act, shall extend to all contracts and agreements (b) whether by deed, or written or verbal, and whether such contract be for a term certain (c), or for a specified work, or otherwise (d).

5. This Act may be extended by the Governor General of India in Council, or by the Executive Government of any Presidency or place, to any place within the limits of their respective jurisdictions (e). In the event of this Act being so extended, the powers hereby vested in a Magistrate of Police shall be exercised by such officer or officers as shall be specially appointed by Government to exercise such powers.

THE INDIAN WORKS OF DEFENCE ACT, 1903.

(ACT VII OF 1903.)

[Passed on the 20th March, 1903.]

HISTORICAL MEMOIR.

Year.	No. of Act.	Name of Act.	How affected.
1903	VII	Works of Defence	Am., Act V of 1909.

Case law:—(a) Recognizance or security for payment of money, illegal, 1 Weir 699; Sind Sadar Court Cr. Rg. 13 of 1897, dated 5th September, 1903; see, also, 27 C. 131 = 4 C.W.N. 201; requiring bond under S. 388 (2), Crim. Pro. Code, legal, Sind Sadar Court Cr. Rg. 6 of 15-8-1902. (b) Agreement, meaning of, 28 B. 66 = 5 Bom. L.R. 689; agreement by minors void, 7 C.W.N. 441 = 30 C. 539 = 30 I.A. 114; 26 A. 342; 28 B. 181. (c) Intermittent contract not unreasonable, 14 W.R. 29, Cr.; continuous contract not unreasonable, 9 Bom. L.R. 362 = 5 Cr. L.J. 337; contract to work for indefinite term, 1 Weir 686; contract containing no indefinite terms as to execution of work, 1 Weir 692; contract to work for a specified period, to work for a further period, 1 Weir 707. (d) No discretion to decline to enforce harsh contracts, 1 Weir 703. (e) If Act extended residence or carrying on business by employer within the area confers right to prefer complaint to Magistrate empowered in the area, 10 S.L.R. 56 = 17 Cr. L.J. 308 = 35 Ind. Cas. 484; employer need not necessarily live in places mentioned in S. 1, 11 P.R. 1902, Cr. (F.B.).

Works of Defence ACT VII OF 1903 (WORKS OF DEFENCE). S. 1

An Act to provide for imposing restrictions upon the use and enjoyment of land in the vicinity of works of defence in order that such land may be kept free from buildings and other obstructions, and for determining the amount of compensation to be made on account of such imposition.

WHEREAS it is expedient to provide for imposing restrictions upon the use and enjoyment of land in the vicinity of works of defence in order that such land may be kept free from buildings and other obstructions and for determining the amount of compensation to be made on account of such imposition ; It is hereby enacted as follows : —

PART I.

PRELIMINARY.

Short title and extent. 1. (1) This Act may be called the Indian Works of Defence Act, 1903 ; and

(2) It extends to the whole of British India, including British Baluchistan, the Sonthal Parganas and the Pargana of Spiti.

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PART II.

IMPOSITION OF RESTRICTIONS.

3. (1) Whenever it appears to the Local Government that it is necessary to impose restrictions upon the use and enjoyment of land in the vicinity of any work of defence or of any site intended to be used or to be acquired for any such work, in order that such land may be kept free from buildings and other obstructions, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders.

(2) The said declaration shall be published in the local official Gazette and shall state the district or other territorial division in which the land is situate and the place where a sketch plan of the land, which shall be prepared on a scale not smaller than six inches to the mile and shall distinguish the boundaries referred to in section 7. may be inspected ; and the Collector shall cause public notice of the substance of the said declaration to be given at convenient places in the locality.

(3) The said declaration shall be conclusive proof that it is necessary to keep the land free from buildings and other obstructions.

4. It shall be lawful for such officer as the Local Government may, by general or special order, authorize in this behalf, and for his servants and workmen, at any time after publication of the notice mentioned in section 3, sub-section (2), to enter upon and survey and take levels of any land in such locality, to dig or bore into the sub-soil, to do all other acts necessary to ascertain whether any and, if so, what restrictions should be imposed on the use and enjoyment of the land, to set out the boundaries of the land upon the use and enjoyment of which restrictions are to be imposed, or of any part of such land, to mark such levels, boundaries and line by placing marks and cutting trenches, and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle :

Declaration and notice that the restrictions will be imposed.

Power to do preliminary acts after publication of notice under section 3, sub-section (2).

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Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

5. The officer so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue-officer of the district, and such decision shall be final.

6. (1) Whenever a declaration has been made and public notice thereof has been given under section 3, it shall, subject to the provisions of sub-sections (2) to (4), be lawful for such officer as the Local Government may, by general or special order, authorize in this behalf, and for his servants and workmen, to enter and demolish any buildings or other constructions on the surface, to cut down or grub up all or any of the trees, to remove or alter all or any of the banks, fences, hedges and ditches, to make underground and other drains, to fill up all excavations, and demolish all buildings and other constructions below the surface, and generally to level and clear the said land and do all such acts for levelling and clearing the same as he may deem necessary or proper, but in such manner nevertheless that evidence of the boundaries of the lands held by different owners may be preserved.

(2) The powers conferred by sub-section (1) shall not be exercised,—

(a) save as otherwise provided by sub-section (3), before the making of the award hereinafter referred to in section 12, nor

(b) save as otherwise provided by sub-section (4), after the expiration of six months from the making of the said award, or any shorter period on the expiration of which the officer exercising such powers gives notice to the Collector that there will be no further exercise of them.

(3) In case of emergency, the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, declare that all or any powers conferred by sub-section (1) may be exercised at any time within six months after the publication of the notice referred to in section 3, sub-section (2), and such powers may be exercised accordingly, and the said notification shall be conclusive proof of emergency.

(4) Nothing in sub-section (2) shall be deemed to preclude any such officer or his servants or workmen from exercising at any time the said powers for the purpose of removing, wholly or in part, any building or other obstruction maintained, created, added to, altered, planted, stacked, stored or otherwise accumulated in contravention of this Act or of any rule or order made thereunder or of any condition prescribed in accordance therewith.

7. From and after the publication of the notice mentioned in section 3, sub section (2), such of the following restrictions as the Local Government may in its discretion declare therein shall attach with reference to such land, namely :—

(a) Within an outer boundary which, except so far as is otherwise provided in section 39, sub-section (4), may extend to a

distance of two thousand yards from the crest of the outer parapet of the work,—

- (i) no variation shall be made in the ground-level, and no building, wall, bank or other construction above the ground shall be maintained, erected, added to or altered otherwise than with the written approval of the [1]General Officer Commanding the Division, [1] and on such conditions as he may prescribe :

- (ii) no wood, earth, stone, brick, gravel, sand or other material shall be stacked, stored or otherwise accumulated :

Provided that, with the written approval of the General Officer Commanding the [2]Division, District or Brigade [2] and on such conditions as he may prescribe, road-ballast, manure and agricultural produce may be exempted from the prohibition :

Provided, also, that any person having control of the land as owner, lessee or occupier shall be bound forthwith to remove such road-ballast, manure or agricultural produce, without compensation, on the requisition of the Commanding Officer ;

- (iii) no surveying operation shall be conducted otherwise than by or under the personal supervision of a public servant duly authorized in this behalf, in the case of land under the control of military authority, by the Commanding Officer and, in other cases, by the Collector with the concurrence of the Commanding Officer ; and

- (iv) where any building, wall, bank or other construction above the ground has been permitted under clause (i) of this subsection to be maintained, erected, added to or altered, repairs shall not, without the written approval of the [1] General Officer Commanding the Division [1] be made with materials different in kind from those employed in the original building, wall, bank or other construction.

- (b) Within a second boundary which may extend to a distance of one thousand yards from the crest of the outer parapet of the work, the restrictions enumerated in clause (a) shall apply with the following additional limitations, namely :—

- (i) no building, wall, bank or other construction of permanent materials above the ground shall be maintained or erected :

Provided that, with the written approval of the [1] General Officer Commanding the Division [1] and on such conditions as he may prescribe, huts, fences and other constructions of wood or other materials, easily destroyed or removed, may be maintained, erected, added to or altered :

Provided, also, that any person having control of the land as owner, lessee or occupier shall be bound forthwith to destroy or remove such huts, fences or other constructions, without

Leg. Changes :—[1] The words "General Officer Commanding the Division" were substituted for "General Officer of the Command" by Act V of 1909. [2] The words "Division, District or Brigade" were substituted for "District" by Act V of 1909.

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compensation, upon an order in writing signed by the General Officer Commanding the [1] Division, District or Brigade; [1] and

- (ii) live hedges, rows or clumps of trees or orchards shall not be maintained, planted, added to or altered otherwise than with the written approval of the [2] General Officer Commanding the Division [2] and on such conditions as he may prescribe.
- (c) Within a third boundary which may extend to a distance of five hundred yards from the crest of the outer parapet of the work, the restrictions enumerated in clauses (a) and (b) shall apply with the following additional limitation, namely:—

no building or other construction on the surface, and no excavation, building or other construction below the surface, shall be maintained or erected:

Provided that, with the written approval of the Commanding Officer and on such conditions as he may prescribe, open railings and dry brushwood fences may be exempted from this prohibition.

- 8. As soon as may be, after the publication of the declaration afore-said, the Collector shall cause the land to be marked out and measured, and shall also prepare a register and a detailed plan, which shall be on a scale not smaller than six inches to the mile, showing accurately every building, tree and other obstruction.

Land to be marked out, measured, registered and planned.

Notice to persons interested.

- 9. (1) At any time before the expiration of—

- (a) the period of eighteen months from the publication of the declaration referred to in section 3, or
- (b) such other period not exceeding three years from the said publication as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, direct in this behalf,

the Collector shall cause public notice to be given at convenient places on or near the land, stating the effect of the said declaration and that claims to compensation for all interests in such land affected by anything done or ordered in pursuance of such declaration may be made to him:

Provided that, where anything has been done in exercise of the powers conferred, in case of emergency, by section 6, sub-section (3), the notice prescribed by this section shall be given as soon as may be thereafter.

(2) Such notice shall state the particulars of any damage ordered to be done or, in the case referred to in section 6, sub-section (3), done in exercise of any of the powers conferred by the said section, and the particulars of any restrictions attaching to the land under section 7, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such

Leg. Changes:—[1] The words "Division, District or Brigade" were substituted for "District" by Act V of 1909. [2] The words "General Officer Commanding the Division" were substituted for "General Officer of the Command" by Act V of 1909.

time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for damage to such interests and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue-district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business.

10. The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

11. Every person required to make or deliver a statement under section 9 or section 10 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

XLV of 1860, Code.

Penalties.

36. Whoever wilfully—

- (a) obstructs any person in doing any of the acts authorized by section 4, section 6 or section 8, or
- (b) destroys, damages, alters or otherwise interferes with the ground-level or any work done under section 6, or
- (c) contravenes any of the provisions of section 7 or any condition prescribed thereunder,

shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both, and, in the case of a continuing offence, with an additional fine which may extend to five rupees for every day after the first in regard to which he is convicted of having persisted in the offence; and any expenses incurred in removing the effects of his offence may be recovered from him in the manner provided by the law for the time being in force for the recovery of fines.

37. If the Collector or officer authorized under section 6 is opposed or impeded in doing anything directed or permitted by this Act, he shall, if a Magistrate, enforce compliance, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras, Bombay and Rangoon) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce compliance.

Magistrate to enforce the terms of the Act.

SUPPLEMENT.

THE ARMS ACT, 1919.

(ACT XX OF 1919.)

[Passed on the 24th September, 1919.]

An Act further to amend the Indian Arms Act, 1878.

WHEREAS it is expedient further to amend the Indian Arms Act, 1878; It is hereby enacted as follows:—

Short title and commencement.	1. (1) This Act may be called the Indian Arms (Amendment) Act, 1919.
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(2) It shall come into force on the first day of January 1920.

Substitution of a new section for section 16, Act XI of 1878.	2. For section 16 of the Indian Arms Act, 1878, the following section shall be substituted, namely:—
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<p>" 16. (1) Any person possessing arms, ammunition or military stores the possession whereof has, in consequence of the cancellation or expiry of a license or of an exemption or by the issue of a notification under section 15 or otherwise, become unlawful, shall without unnecessary delay deposit the same either with the officer in charge of the nearest police station or, at his option and subject to such conditions as the Local Government may by rule prescribe, with a licensed dealer.</p>	<p>the following section shall be substituted, namely:—</p> <p>" 16. (1) Any person possessing arms, ammunition or military stores the possession whereof has, in consequence of the cancellation or expiry of a license or of an exemption or by the issue of a notification under section 15 or otherwise, become unlawful, shall without unnecessary delay deposit the same either with the officer in charge of the nearest police station or, at his option and subject to such conditions as the Local Government may by rule prescribe, with a licensed dealer.</p>
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(2) When arms, ammunition or military stores have been deposited under sub-section (1) or, before the first day of January 1920, under the provisions of any law for the time being in force, the depositor shall, at any time before the expiry of such period as the Local Government may by rule prescribe, be entitled—

- (a) to receive back any thing so deposited the possession of which by him has become lawful, and
- (b) to dispose, or authorize the disposal, of any thing so deposited by sale or otherwise to any person whose possession of the same would be lawful; and to receive the proceeds of any such sale:

Provided that nothing in this sub-section shall be deemed to authorize the return or disposal of any thing the confiscation of which has been directed under section 24.

(3) All things deposited as aforesaid and not returned or disposed of under sub-section (2) within the prescribed period therein referred to shall be forfeited to His Majesty.

(4) (a) The Local Government may make rules consistent with this Act for carrying into effect the provisions of this section.

(b) In particular and without prejudice to the generality of the foregoing provision, the Local Government may by rule prescribe—

- (i) the conditions subject to which arms, ammunition and military stores may be deposited with a licensed dealer, and
- (ii) the period after the expiry of which things deposited as aforesaid shall be forfeited under sub-section (3)."

THE CANTONMENTS ACT, 1919.

(ACT XXII OF 1919.)

[Passed on the 24th September, 1919.]

An Act further to amend the Cantonments Act, 1910.

WHEREAS it is expedient further to amend the Cantonments Act, 1910; It is hereby enacted as follows :—

Short title. 1. This Act may be called the Cantonments (Amendment) Act, 1919.

Amendment of section 24, Act XV of 1910. 2. In section 24 of the Cantonments Act, 1910,—

(1) for clause (20) the following clause shall be substituted, namely :—

"(20) the prohibition of the practice of any profession or of the carrying on of any trade, calling, or occupation in any part of the cantonment otherwise than in accordance with the conditions of a license; the fees payable for the grant and renewal of such licenses and the authorities by which and the conditions subject to which such licenses may be granted, refused, suspended and revoked."

(2) in clause (23) the words "loitering or importuning for the purpose of" shall be omitted, and after the word "cantonment" where it first occurs the words "of prostitutes and procurers" shall be inserted.

THE CINEMATOGRAPH ACT, 1919.

(ACT XXIII OF 1919.)

[Passed on the 24th September, 1919.]

An Act to amend the Cinematograph Act, 1918.

WHEREAS it is expedient to amend the Cinematograph Act, 1918; It is hereby enacted as follows :—

Short title. 1. This Act may be called the Cinematograph (Amendment) Act, 1919.

Amendment of section 1, Act II of 1918. 2. For sub-section (3) of section 1 of the Cinematograph Act, 1918 (hereinafter referred to as the said Act), the following sub-section shall be substituted, namely :—

"(3) The Governor General in Council may, by notification in the Gazette of India, direct that the whole or any of its provisions shall

S. 4 ACT XXIII OF 1919 (CINEMATOGRAPH). Cinematograph

come into force in any Province or part of a Province on such date as may be specified in the notification."

Amendment of section 5, Act II of 1918. 3. In sub-section (2) of section 5 of the said Act, for the words "the prescribed authority" the words and figure "an authority constituted under section 7" shall be substituted.

Substitution of a new section for section 7, Act II of 1918. 4. For section 7 of the said Act the following section shall be substituted, namely:—

"7. (1) Any Local Government authorized in this behalf by the Governor General in Council may, by notification in the local official Gazette, constitute as many authorities as it may think fit for the purposes of examining and certifying films as suitable for public exhibition, and declare the area (hereinafter referred to as the 'local area') within which each such authority shall exercise the powers conferred on it by this Act. Where an authority so constituted consists of a Board of two or more persons, not more than one-half of the members thereof shall be persons in the service of Government.

(2) If any such authority after examination considers that a film is suitable for public exhibition, it shall grant a certificate to that effect to the person applying for the same, and shall cause the film to be marked in the prescribed manner. The certificate of any such authority shall, save as hereinafter provided, be valid throughout the territories in which this Act is in force.

(3) (a) If the authority is of opinion that a film is not suitable for public exhibition in the local area, it shall inform the person applying for the certificate of its decision, and such person may, within thirty days from the date of such decision, appeal for a reconsideration of the matter by the Local Government by which the authority was constituted.

(b) If the Local Government rejects the appeal it shall, by notification in the local official Gazette, direct that the film shall be deemed to be an uncertified film in that local area, and such direction shall have effect notwithstanding the subsequent grant of a certificate in respect of the film by any other such authority.

(4) Any such authority may demand the exhibition before itself of any certified film which it has reason to believe is about to be publicly exhibited in its local area, and may by order suspend the certificate of any such film pending the orders of the Local Government, and during such suspension the film shall be deemed to be an uncertified film in that area.

(5) The District Magistrate, or, in a Presidency town or in the town of Rangoon, the Commissioner of Police, may by order suspend the certificate of any film pending the orders of the Local Government, and during such suspension the film shall be deemed to be an uncertified film in that district or town.

(6) A copy of any order of suspension made under sub-section (4) or (5), together with a statement of reasons therefor, shall forthwith be forwarded by the authority or the officer making the same to the Local

Government by which the authority was constituted or to which the officer is subordinate, as the case may be, and such Local Government may, in its discretion, either discharge the order or, by notification in the local official Gazette, direct that the film shall be deemed to be an uncertified film in the whole or any part of the Province.

(7) A Local Government may, of its own motion, by notification in the local official Gazette, direct that a certified film shall be deemed to be an uncertified film in the whole or any part of the Province.

(8) The exhibition of a film to which any order or direction under clause (b) of sub-section (3) or sub-section (4), (5), (6) or (7) is for the time being applicable shall, in the area to which such order or direction relates, be deemed to be a contravention of the condition mentioned in sub-section (2) of section 5."

Amendment of
section 8, Act II of
1918.

5. In section 8 of the said Act—

(1) at the end of clause (b) of sub-section (2) the word "and" shall be omitted, and after the same clause the following clause shall be inserted, namely :—

(bb) the appointment of officers subordinate to authorities constituted under section 7 and the regulation of the powers and duties of such officers ; and " ; and

(2) for sub-section (3) the following sub-section shall be substituted, namely :—

" (3) The Governor General in Council may delegate to a Local Government, subject to such conditions and restrictions as he may impose, the power to make rules regarding all or any of the matters mentioned in sub-section (2) so far as regards the territories subject to that Government."

LETTERS PATENT (CALCUTTA) AMENDMENT.

Letters Patent amending the Letters Patent constituting the High Court of Judicature at Fort William in Bengal, dated the 11th March 1919.

1. Now know ye that We upon full consideration of the premises and of Our special grace certain knowledge and mere motion have thought fit to amend and by these Presents do accordingly amend the said Letters Patent bearing date the twenty-eighth day of December in the year of Our Lord One thousand eight hundred and sixty-five in manner following, that is to say :—

(a) In the 8th clause of the said Letters Patent the words "and We do hereby ordain that every such appointment shall be forthwith submitted to the approval of the Governor General in Council and shall be either confirmed or disallowed by the Governor General in Council" shall be annulled ;

(b) In the 15th clause of the same for the words and brackets " (not being a sentence or order passed or made in any criminal trial) " the words and brackets " (not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section One hundred and seven of the Government of India Act, 1915, or in the exercise of criminal jurisdiction) " shall be substituted ;

(c) In the 36th clause of the same for the words " under the provisions of the Thirteenth section of the aforesaid Act of the Twenty-fourth and Twenty-fifth years of Our reign " the words and figures " in pursuance of Section One hundred and eight of the Government of India Act, 1915," shall be substituted ; and

(d) For the 44th clause of the same the following shall be substituted, namely, " And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor General in Legislative Council, and also of the Governor General in Council under Section Seventy-one of the Government of India Act, 1915, and also of the Governor General in cases of emergency under Section Seventy-two of that Act, and may be in all respects amended and altered thereby."

2. And We do further ordain and declare that these Letters Patent shall be published in the Gazette of India and shall have effect from the date of such publication.

Publication and commencement.

LETTERS PATENT (MADRAS) AMENDMENT.

The following Amendment has been made with reference to the Letters Patent for the High Court of Judicature at Madras on the 11th of March 1919.

1. Now know Ye That We upon full consideration of the premises and of Our special grace certain knowledge, and mere motion have thought fit to amend and by these Presents do accordingly amend the said Letters Patent bearing date the twenty-eighth day of December in the year of Our Lord One thousand eight hundred and sixty-five in manner following that is to say :

(a) In the 8th clause of the said Letters Patent the words " and We do hereby ordain that every such appointment shall be forthwith submitted to the approval of the Governor in Council, and shall be either confirmed or disallowed by the Governor in Council," shall be omitted ;

(b) In the 15th clause of the same for the words and brackets " (not being a sentence or order passed or made in any criminal trial) " the words and brackets " (not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section One Hundred and Seven of the Government of India Act, 1915, or in the exercise of criminal jurisdiction) " shall be substituted ;

(c) In the 36th clause of the same for the words "under the provisions of the Thirteenth section of the Aforesaid Act of the Twenty-fourth and Twenty-fifth years of our reign the words and figures "in pursuance of Section One hundred and eight of the Government of India Act, 1915," shall be substituted ; and

(d) For the 44th clause of the same the following shall be substituted, namely: "And we do further ordain and declare that all the provisions of these Our Letters Patent are subject to the Legislative powers of the Governor General in Legislative Council, and also of the Governor General in Council under section seventy-one of the Government of India Act, 1915, and also of the Governor General in cases of emergency under Section Seventy-two of that Act, and may be in all respects amended and altered thereby."

2. And we do further ordain and declare that these Letters Patent shall be published in the Fort Saint George Gazette and shall have effect, from the date of such publication.

LETTERS PATENT (PUNJAB).

Letters Patent constituting the High Court of Judicature at Lahore, for the Provinces of Punjab and Delhi, dated 21st March 1919.

GEORGE THE FIFTH, by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, To all to whom these Presents shall come greeting: Whereas by an Act of Parliament passed in the Fifth and Sixth years of Our Reign and called the Government of India Act, 1915, it was amongst other things enacted that it should be lawful for Us by Letters Patent to establish a High Court of Judicature in any territory in British India whether or not included within the limits of the local jurisdiction of another High Court and to confer on any High Court so established any such jurisdiction, powers and authority as were vested in or might be conferred on any High Court existing at the commencement of that Act:

And whereas the Provinces of the Punjab and Delhi are now subject to the jurisdiction of the Chief Court of the Punjab which was established by an Act of the Governor General of India in Council, being Act No. XXIII of 1865, and was continued by later enactments and no part of the said provinces is included within the limits of the local jurisdiction of any High Court.

1. Now know ye that We, upon full consideration of the premises, and of Our special grace, certain knowledge, and mere motion, have thought fit to erect and establish, and by these presents We do accordingly for Us, Our Heirs and Successors, erect and establish for the Provinces of the Punjab and Delhi aforesaid, with effect from the date of the publication of these presents in the Gazette of India, a High Court of Judicature, which shall be called the High Court of Judicature at Lahore, and We do hereby constitute the said Court to be a Court of Record.

Establishment of
High Court at
Lahore.

2. And We do hereby appoint and ordain that the High Court of Judicature at Lahore shall, until further or other provision be made by Us, or Our Heirs and Successors, in that behalf in accordance with section one hundred and one of the said recited Government of India Act, 1915, consist of a Chief Justice and six other Judges, the first Chief Justice being Sir Henry Adolphus Rattigan, Knight, and the six other Judges being William Chevis, Esquire, Henry Scott-Smith, Esquire, Shadi Lal, Esquire, Rai Bahadur, Walter Aubin Le Rossignol, Esquire, Leycester Hudson Leslie Jones, Esquire, and Alan Brice Broadway, Esquire, being respectively qualified as in the said Act is declared.

3. And We do hereby ordain that the Chief Justice and every other Judge of the High Court of Judicature at Lahore, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Lieutenant-Governor of the Punjab may commission to receive it:—

"I, A.B., appointed Chief Justice [or a Judge] of the High Court of Judicature at Lahore, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment."

4. And We do hereby grant, ordain and appoint that the High Court of Judicature at Lahore shall have and use as occasion may require, a seal bearing a device and impression of Our Royal Arms, within an exergue or label surrounding the same, with this inscription: "The seal of the High Court at Lahore." And We do further grant, ordain and appoint that the said seal shall be delivered to and kept in the custody of the Chief Justice and in case of vacancy of the office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice under the provisions of section 105 of the Government of India Act, 1915; and We do further grant, ordain and appoint that, whensoever the office of Chief Justice or of the Judge to whom the custody of the said seal be committed is vacant, the said High Court shall be, and is hereby authorized and empowered to demand, seize and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her or their possession.

5. And We do hereby further grant, ordain and appoint that all writs, summonses, precepts, rules, orders and other mandatory processes to be used, issued or awarded by the High Court of Judicature at Lahore shall run and be in the name and style of Us, or of Our Heirs and Successors, and shall be sealed with the seal of the said High Court.

6. And We do hereby authorize and empower the Chief Justice of the High Court of Judicature at Lahore from time to time, as occasion may require and subject to any rules and restrictions which may be prescribed from time to time by the Lieutenant-Governor of the Punjab, to appoint so many and such clerks and other ministerial officers as may be found necessary

for the administration of justice and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And it is Our further will and pleasure, and We do hereby, for Us, Our Heirs and Successors, give, grant, direct and appoint, that all and every the officer and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice may, from time to time, appoint for each office and place respectively, and as the Lieutenant-Governor of the Punjab, subject to the control of the Governor General in Council, may approve of: Provided always, and it is Our will and pleasure, that all and every the officer and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as they hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed from time to time by the Governor General in Council, and to absent himself from the said limits during the term of such leave in accordance with the said rules.

Criminal jurisdiction.

15. And We do further ordain that the High Court of Judicature at Lahore shall have ordinary original criminal jurisdiction in respect of all such persons within the Provinces of the Punjab and Delhi as the Chief Court of the Punjab had such criminal jurisdiction over immediately before the publication of these presents.

Ordinary original criminal jurisdiction of the High Court.

16. And We do further ordain that the High Court of Judicature at Lahore in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

Jurisdiction as to persons.

17. And We do further ordain that the High Court of Judicature at Lahore shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any magistrate or other officer empowered by the Government in that behalf.

Extraordinary original criminal jurisdiction.

No appeal from High Court exercising original jurisdiction.

Court may reserve points of law.

18. And We do further ordain that there shall be no appeal to the High Court of Judicature at Lahore from any sentence or order passed or made by the courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

19. And We do further ordain that, on such point or points of law being so reserved as aforesaid, the High Court of Judicature at Lahore shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court may seem right.

High Court to review cases on points of law reserved by one or more Judges of the High Court.

20. And We do further ordain that the High Court of Judicature at Lahore shall be a Court of Appeal from the Criminal Courts of the Provinces of the Punjab and Delhi and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the Chief Court of the Punjab by virtue of any law then in force, or as may after the date be declared subject to appeal to the High Court of Judicature at Lahore by any law made by competent legislative authority for India.

21. And We do further ordain that the High Court of Judicature at Lahore shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges, or by any other officers in the Provinces of the Punjab and Delhi who were immediately before the publication of these presents, authorized to refer cases to the Chief Court of the Punjab and to revise all such cases tried by any officer or Court possessing criminal jurisdiction in the Provinces of the Punjab and Delhi, as were immediately before the publication of these presents, subject to reference to or revision by the Chief Court of the Punjab.

22. And We do further ordain that the High Court of Judicature at Lahore shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court.

Criminal Law.

23. And We do further ordain that all persons brought for trial before the High Court of Judicature at Lahore, either in the exercise of its original jurisdiction or in the exercise of its jurisdiction as a court of appeal, reference or revision, charged with any offence for which provision is made by Act No. XLV of 1860, called the "Indian Penal Code," or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

Powers of Single Judges and Division Courts.

26. And We do hereby declare that any function which is hereby directed to be performed by the High Court of Judicature at Lahore, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose in pursuance of section 108 of the Government of India Act, 1915; and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such

Merchant Shipping ACT XXV OF 1919 (MERCHANT SHIPPING). S. 1

point shall be decided according to the opinion of the majority of the Judges, if there be a majority, but, if the Judges be equally divided, then the opinion of the senior Judge shall prevail.

Criminal Procedure.

28. And We do further ordain that the proceedings in all criminal cases brought before the High Court of Judicature at Lahore shall be regulated by the Code of Criminal Procedure: being an Act, No. V of 1898, passed by the Governor General in Council, or by such further or other laws in relation to criminal procedure as may have been or may be made by competent legislative authority for India.

Appeals to Privy Council.

31. And We do further ordain that from any judgment, order or sentence of the High Court of Judicature at Lahore made in the exercise of original criminal jurisdiction or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court, in manner provided by the 18th clause of these presents, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order or sentence to appeal to Us, Our Heirs, or Successors, in Council, provided the said High Court declares that the case is a fit one for such appeal and that the appeal be made under such conditions as the said High Court may establish or require, but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Provinces of the Punjab and Delhi.

THE MERCHANT SHIPPING ACT, 1919.

(ACT XXV OF 1919.)

[Passed on the 24th September, 1919.]

An Act further to amend the Indian Merchant Shipping Acts, 1859 and 1883.

WHEREAS it is expedient further to amend the Indian Merchant Shipping Acts, 1859 and 1883; It is hereby enacted as follows:—

1. This Act may be called the Indian Merchant Shipping Law Amendment Act, 1919.

2. In section 114 of the Indian Merchant Shipping Act, 1859, for the words "belonging to, or in the service of Her Majesty" the words "belonging to His Majesty or the Government" shall be substituted.

3. In section 5 of the Indian Merchant Shipping Act, 1883, for the words "belonging to, or in the service of Her Majesty or of the Government of India," the words "belonging to His Majesty or the Government" shall be substituted.

SUPPLEMENT (1920—1924) TO
THE ALL INDIA CRIMINAL COURT MANUAL
IMPERIAL ACTS—Vol. I.

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TO
THE ALL INDIA
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VOL I

BY
P. HARI RAO, B.A., B.L.,
HIGH COURT VAKIL, MADRAS

CONTAINING
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PREFATORY NOTE.

The All India Criminal Court Manual was published in 1920. Since then a large number of Minor Acts (Criminal) has been newly enacted by the Indian Legislature and the Criminal Procedure Code has undergone such considerable changes between 1920 and 1924 as to make it almost a thoroughly new Code. Similarly, during the same period, the Penal Code has also been amended by various amending Statutes. To bring, therefore, both the volumes of the All India Criminal Court Manual up-to-date, this supplement is issued, in two separate parts, so that the first part may be bound with Vol. I, and the second part with Vol. II, the Manual. To facilitate reference, the full text of the Criminal Procedure Code, as amended up-to-date, has been printed in the supplement to Vol. II.

TRIPLICANE,)
Dated, 25th September, 1924. {

P. HARI RAO.

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SUPPLEMENT TO THE ALL INDIA CRIMINAL COURT MANUAL VOL. I [1920—1924.]

Army Act, 1911.
(ACT VIII OF 1911.)

[Amended by Acts II of 1920; XXVII of 1920 and XXXIII of 1923.]

S. 7.—*[Amended by Act XXXIII of 1923.]*

Amendment of section 7, Act VIII of 1911. 2. In section 7 of the Indian Army Act, 1911 (hereinafter referred to as the said VIII of 1911, Act),—

(a) to clause (1) after the words "land forces" the following words shall be added, namely:—

"and includes, in relation to a person subject to this Act when serving under such conditions as may be prescribed, a person holding a commission in His Majesty's Air Force"; and

(b) in clause (7) after the words "Army Act" the words "or the Air Force Act" shall be added.

S. 20.—*[Amended by Act XXXVII of 1920.]*

Amendment of section 20 of Act VIII of 1911. 2. In sub-section (2) of section 20 of the Indian Army Act, 1911 (hereinafter referred to as the said Act),—

(1) for the words "Imprisonment in military custody may be specified as such a minor punishment" the words "Imprisonment in military custody and, in the case of persons subject to this Act on active service, any prescribed field punishment may be specified as minor punishments" shall be substituted; and

(2) in clause (a) after the word "imprisonment" the words "or field punishment" shall be inserted.

S. 24.—[Amended by Act XXXVII of 1920.]

Amendment of
section 24 of Act
VIII of 1911.

3. In section 24 of the said Act—

(1) to sub-section (1) the words "He may at any time arrest and detain for trial any person subject to this Act who commits an offence and may also carry into effect any punishments to be inflicted in pursuance of the sentence of a court-martial" shall be added; and

(2) for sub-sections (2) and (3) the following sub-section shall be substituted, namely:—

"(2) A provost-marshal may punish with any punishment mentioned in section 22, sub-section (1), clause (b) any follower who is subject to this Act under section 2, sub-section (1), clause (c) and is a menial servant and who on active service and in his view, or in the view of any of his assistants, commits any breach of good order and military discipline."

S. 41.—[Amended by Act XXXVII of 1920.]

Amendment of
section 41 of Act
VIII of 1911.

4. In section 41 of the said Act—

(1) in clause (a) after the word "punishment," and

(2) in clause (b) after the word "punishment," where it first occurs,

the words "other than whipping" shall be inserted.

S. 45.—[Amended by Act XXXVII of 1920.]

Substitution of
new section for sec-
tion 45 of Act VIII
of 1911.

5. For section 45 of the said Act the following section shall be substituted, namely:—

"45. Where any person, subject to this Act and under the rank of warrant officer, on active service is guilty of any offence, it shall be lawful for a court-martial to award for that offence any such punishment, other than flogging as may be prescribed as a field punishment. Field punishment shall be of the character of personal restraint or of hard labour but shall not be of a nature to cause injury to life or limb."

Ss. 46 and 49.—[Amended by Act XXXVII of 1920.]

Amendment of
sections 46 and 49
of Act VIII of 1911.

6. In sections 46 and 49 of the said Act, for the words "corporal punishment" the words "field punishment" shall be substituted.

S. 103-A AM. ACTS, II & XXXVII OF 1920 & XXXIII OF 1923. **Army**

S. 50.—[Amended by Act XXXVII of 1920.]

Amendment of
section 50 of Act
VIII of 1911.

7. In section 50 of the said Act—

- (1) to clause (a) the words "or of field punishment awarded by a court-martial or such officer," shall be added ; and
- (2) in clause (b) after the word "imprsonment" the words "or field punishment" shall be inserted.

S. 67.—[Amended by Act XXXVII of 1920.]

Substitution of
new section for sec-
tion 67 of Act VIII
of 1911.

8. For section 67 of the said Act the fol-
lowing section shall be substituted, namely :—

" 67. No trial by court-martial of any person subject to this Act for any offence (other than an offence of mutiny, desertion or fraudulent enrolment) shall be commenced after the expiration of three years from the date of such offence, and no such trial for an offence of desertion (other than desertion on active service) or of fraudulent enrolment shall be commenced if the person in question has, subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of His Majesty's regular forces.

Explanation.—For the purposes of this section, ' mutiny ' means any of the offences specified in clauses (a), (b) and (c) of section 27."

S. 91-A.—[Amended by Act XXXIII of 1923.]

Amendment of
section 91-A, Act
VIII of 1911.

3. To section 91-A of the said Act the following sub-section shall be added, namely :—

" (7) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report may be used as evidence in any proceeding under this Act."

S. 103-A.—[Added by Act XXXIII of 1923.]

Insertion of new
section 103-A in Act
VIII of 1911.

4. In Chapter VIII of the said Act, after section 103 the following section shall be inserted, namely :—

" 103-A. (1) Whenever in the course of a trial by court-martial it appears to the Court that the person charged is of unsound mind and consequently incapable of making his defence, or that such person committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was

wrong or contrary to law, the Court shall record a finding accordingly, and the President of the Court or the officer holding the trial, as the case may be, shall forthwith report the case to the confirming officer, or, in the case of a court-martial whose finding does not require confirmation, to the prescribed officer.

- (2) A confirming officer to whom a case is reported under sub-section (1) may, if he does not confirm the finding, take steps to have the accused person tried by the same or another court-martial for the offence with which he was originally charged.
- (3) A prescribed officer to whom a case is reported under sub-section (1) and a confirming officer confirming a finding in any case so reported to him shall order the accused person to be kept in custody in the prescribed manner, and shall report the case for the orders of the Governor-General in Council.
- (4) On receipt of a report under sub-section (3), the Governor-General in Council may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.
- (5) Where an accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention, the prescribed officer may—
 - (a) if such person is in custody under sub-section (3), on the report of a medical officer that he is capable of making his defence, or
 - (b) if such person is detained under sub-section (4), on a certificate such as is referred to in section 473 of the Code of Criminal Procedure, 1898,
 take steps to have such person tried by the same or another court-martial for the offence with which he was originally charged or, provided that the offence is a civil offence, by a Criminal Court.
- (6) A copy of every order made by the prescribed officer under sub-section (5) shall forthwith be sent to the Governor-General in Council."

V of 1898.

S. 111.—[*Repealed by Act XXXVII of 1920.*]

Repeal of section
111 of Act VIII of
1911.

10. Section 111 of the said Act is hereby repealed.

S. 113.—[*Amended by Act XXXVII of 1920.*]

Amendment of
section 113 of Act
VIII of 1911.

9. After clause (b) of sub-section (2) of section 113 of the said Act the following clause shall be inserted, namely :—

"(bb) the specification of the punishments which may be awarded as field punishments under sections 20 and 45."

S. 116.—[Amended by Act II of 1920.]

Amendment of section 116, Act VIII of 1911. 2. In section 116 of the Indian Army Act, 1911, after the words "becoming insane" VIII of 1911, the following shall be added, namely:—

"or, who, being on active service, is officially reported missing :

Provided that, in the case of a person so reported missing, no action shall be taken under sub-sections (2) to (5), inclusive, of the said section, until one year has elapsed from the date of such report."

Auxiliary Force Act, 1920.

(ACT XLIX OF 1920.)

[Passed on the 22nd September, 1920.]

[Amended by Act XXXI of 1923.]

An Act to constitute an auxiliary force for service in India.

WHEREAS it is expedient to constitute an auxiliary force for service in India ; It is hereby enacted as follows :—

Short title, extent and commencement. 1. (1) This Act may be called the Auxiliary Force Act, 1920.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, and applies also to European British subject within the territories of any Prince or Chief in India.

(3) It shall come into force on the first day of October 1920.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

"Advisory Committee" means an Advisory Committee constituted under section 28 for the prescribed military area or part of a prescribed military area within which a person subject to this Act for the time being resides or is serving, as the case may be ;

"competent military authority" means General or other Officer Commanding the prescribed military area within which a person subject to this Act for the time being resides or is serving, as the case may be ;

"enrolled person" means a person enrolled in the prescribed manner under this Act ;

"enrolling officer" means an officer authorized to enrol persons under this Act ;

"prescribed" means prescribed by rules made under this Act, and "prescribe" has a corresponding meaning ;

"regulation" means a regulation made under section 31 ; and

"training year" means a period of twelve months beginning on the first day of April and ending on the thirty-first day of March.

Constitution of an auxiliary force. 3. There shall be raised and maintained in the manner hereinafter provided an auxiliary force for service in India to be designated the Auxiliary Force, India.

Classes who may be enrolled. 4. Every person who—

V of 1898.

(a) is a European British subject as defined in the Code of Criminal Procedure, 1898, or

III of 1917

(b) was, on the thirtieth day of September, 1920, enrolled or deemed to be enrolled under the Indian Defence Force Act, 1917 (not being a person enrolled under the provisions of section 12 of that Act), or

(c) is a British subject of European descent in the male line, or

(d) not being a British subject, satisfies the conditions prescribed for enrolment of persons of that class,

shall, subject to the provisions of this Act, be eligible for enrolment thereunder.

Enrolment. 5. (1) Any male eligible for enrolment under this Act who has attained the age of sixteen years and is not a member of His Majesty's regular naval, military or air forces or of His Majesty's Royal Indian Marine may apply to be enrolled in the Auxiliary Force, India, and, if he satisfies the prescribed conditions, may be enrolled therein in the prescribed manner, and shall thereupon become subject to the provisions of this Act.

(2) An applicant for enrolment may apply to be enrolled for service in any particular branch, or in any particular corps or unit located in the prescribed military area within which he for the time being resides.

Liability to undergo military training. 6. Every enrolled person shall be liable to undergo military training as provided by or under this Act until discharged from the Auxiliary Force, India, as hereinafter provided.

Liability to perform military service. 7. Every enrolled person liable to undergo military training under section 6 shall, on and from the first day of April next following the date on which he attains the age of eighteen years, or, if he has already attained the age of eighteen years, on and from any latter date on which he is enrolled, be liable to perform military service under this Act.

Appointed to corps or unit. 8. (1) Every enrolled person shall, without unnecessary delay, be appointed by, or under the orders of, the competent military authority to a corps or unit of the Auxiliary Force, India, and on receipt of an order so appointing him shall report himself for the purpose of joining such corps or unit at such time and place as may be specified in the order.

(2) Any person who has been enrolled for service in any particular branch, corps or unit shall be appointed to a corps or unit of that branch or to that corps or unit, as the case may be.

9. Every enrolled person liable to perform military service under this Act who on becoming so liable has not attained the age of thirty-one years shall, within the training year in which he becomes so liable, undergo the preliminary training specified in Schedule I :

Provided that, if such preliminary training cannot be completed within that training year, it may be completed at the discretion of the competent military authority in the training year next following :

Provided further that any person who has completed the preliminary training required by regulations made under the Indian Defence Force Act, 1917, or who has served for a period of six months in His Majesty's naval, military or air forces or in His Majesty's Royal Indian Marine, or who is certified by the competent military authority to have undergone adequate military training under the Indian Defence Force Act, 1917, or under this Act or otherwise, shall be deemed to have completed the preliminary training required by this section. III of 1917;

10. Every enrolled person (other than a commissioned officer of the Auxiliary Force, India), who is entitled to rank as an officer of His Majesty's Forces, shall undergo such periodical training as may be laid down in regulations.

11. Every enrolled person liable to perform military service under this Act (other than a person to whom the provisions of section 10 apply) shall be included as hereinafter provided in one or other of the following classes, namely :—

- (a) the Active Class ;
- (b) the First (A) Class of the Reserve ; or
- (c) the Second (B) Class of the Reserve ; and shall undergo the periodical training specified in Schedule I for the Class in which he is for the time being included.

12. (1) Every commissioned officer of the Auxiliary Force, India, shall be included in the Active Class until he relinquishes his commission.

(2) Enrolled persons liable to perform military service under this Act, not being commissioned officers of the Auxiliary Force, India, or entitled to rank as officers of His Majesty's Forces, shall be classified as follows, namely :—

- (a) every such person who is required by section 9 to undergo preliminary training and has completed or is deemed to have completed the same shall be included in the Active Class until the end of the training year in which he attains the age of thirty-one years ;
- (b) every such person who has completed the period of service in the Active Class as required by clause (a) or is enrolled after attaining the age of thirty-one years and before attaining the age of forty years shall be included in the First (A) Class of the Reserve until the end of the training year in which he attains the age of forty years ;

- (c) every such person who has completed the period of service in the First (A) Class of the Reserve as required by clause (b) or is enrolled after attaining the age of forty years shall be included in the Second (B) Class of the Reserve until discharged from the Auxiliary Force, India, as hereinafter provided.

(3) Any enrolled person who ceases to be entitled to rank as an officer of His Majesty's Forces or to be a commissioned officer of the Auxiliary Force, India, shall thereupon be included in the Class in which he would have been included under this section if the provisions of section 10 or sub-section (1), as the case may be, had not applied to him, and shall undergo periodical training accordingly.

(4) Any person who is under this section included in either Class of the Reserve may apply to the competent military authority to be included for any training year in any other Class for which more periodical training is specified in Schedule I, and shall thereupon be deemed to be included in that Class.

(5) Notwithstanding anything hereinbefore contained, if any person is under this section included in any Class after the commencement of a training year, the competent military authority shall reduce to such extent as he may deem fit, or may remit, the amount of periodical training to be undergone by such person in that year.

Variations of training. of **13. (1)** The competent military authority may, by order in writing,—

- (a) on the recommendation of the Advisory Committee, direct the inclusion of any enrolled person in any Class for which less periodical training is specified than that specified for the Class in which is included under the provisions of section 12, or
- (b) on his own motion or on the recommendation of the Advisory Committee, reduce the specified amount of training either in individual cases or in the case of any unit or part thereof for any stated period.

(2) The competent military authority shall grant to each person whose training is reduced under clause (b) of sub-section (1) a certificate setting forth the amount of training to be undergone during the said period.

Medical examination. **14.** Every enrolled person shall, if and when required by the competent military authority, present himself for such medical examination as may be necessary to determine the extent, if any, to which he is fit to undergo military training or to perform military service, before a medical officer appointed or approved in that behalf by the competent military authority, and for the purposes of such medical examination shall comply with the directions of such medical officer.

Transfers. **15. (1)** Every person appointed to a corps or unit under section 8 shall remain in that corps or unit until transferred to another corps or unit by, or under the orders of, the competent military authority, but no person shall be transferred from the

Infantry branch to another branch or from one unit to another unit located in the same prescribed military area except at his own request.

(2) Any person so transferred from the Infantry branch to another branch may be required to undergo such further preliminary training, not exceeding eight days, as may be ordered by the competent military authority, and thereafter shall undergo the periodical training specified in Schedule I for the branch to which he is transferred :

Provided that any periodical training already undergone by such person in the training year in which he is transferred shall be deemed to have been undergone in such other branch.

Explanation—For the purposes of this section and of Schedule I, a day shall be deemed to consist of four hours of actual military drill or instruction, and may be made up of fractions of a day not more than four in number.

16. (1) Any enrolled person who leaves his place of residence in India for the time being and thereby leaves the area commanded by one competent military authority for that commanded by another shall, if he does not intend to return to the area which he leaves, notify the competent military authority commanding that area of his change of residence.

(2) If such person having intended to return does not return within three months, he shall notify the competent military authority as aforesaid immediately on the expiry of that period.

(3) The competent military authority on being notified of a change of residence under sub-section (1) or sub-section (2) may, subject to the provisions of section 15, transfer such person from the corps or unit in which he is serving to another corps or unit.

17. (1) Any enrolled person who has attained the age of forty-five years or has completed four years' service from the date of his enrolment shall on application made by him in the prescribed manner, be entitled to receive his discharge from the Auxiliary Force, India.

(2) An enrolled person who is not entitled to his discharge under sub-section (1) may be discharged by the competent military authority on a recommendation of the Advisory Committee in this behalf.

18. No person liable to perform military service under this Act shall be required to perform such service except—

- (a) when called out with any portion of the Auxiliary Force, India, by an order of the senior military officer present either to act in support of the civil power or to provide guards which, in the opinion of such officer, are essential ; or
- (b) when any portion of the Auxiliary Force, India, to which he belongs has been embodied to support or supplement His Majesty's regular forces in the event of an emergency by a notification directing such embodiment issued by the Governor General in Council or any Local Government

empowered by the Governor-General in Council in that behalf and published in the Gazette of India or the local official Gazette, as the case may be ; or

(c) when attached at his own request to any regular forces.

19. No person called out under clause (a), or embodied under clause (b), of section 18 shall be required to perform military service beyond the limits of the prescribed military area in which the corps or unit to which he has been appointed or is for the time being attached is located, save when it is, in the opinion of the senior military officer present, necessary to proceed beyond those limits in the course of the military operations upon which the corps or unit or any portion thereof is for the time being engaged.

Territorial limits of liability to military service on calling out and embodiment.

20. Any portion of the Auxiliary Force, India, which, having been called out or embodied under section 18, is performing military service, shall be replaced by regular troops or otherwise as soon as circumstances permit, and shall not be required to perform such service after such replacement, has been effected to the satisfaction of the senior military officer present or after the cancellation of the order or notification under clause (a) or (b), as the case may be, of section 18.

Duration of military service on calling out or embodiment.

[1] 21. (1) Every commissioned officer of the Auxiliary Force, India, when doing duty as a commissioned officer, and every non-commissioned officer and man of the said Force—

Application of the Army Act.

(a) when attached to or otherwise acting as part of or with any regular forces, and

(b) when called out by an order, or embodied by a notification, under section 18,

44 & 45 Vict., shall be subject to the provisions of the Army Act and any orders or regulations made thereunder, and the said Act, orders and regulations shall apply to every such person in the circumstances aforesaid as if the same were enacted in this Act, and as if such person held the same rank in His Majesty's Army as he holds for the time being in the said Force.

c. 58.

(2) Where an offence punishable under the Army Act has been committed by any person whilst subject to that Act under the provisions of sub-section (1), such person may be taken into and kept in military custody and tried and punished for such offence, although he has ceased to be so subject as aforesaid, in like manner as he might have been taken into and kept in military custody, tried or punished if he had continued to be so subject :

Provided that no such person shall be kept in military custody after he has ceased to belong to the Auxiliary Force, India, unless he has been taken into or kept in military custody, on account of the offence before the date on which he ceased so to belong, nor shall be kept in military

Leg. Changes :—[1] The original S. 21 was re-numbered as sub-S. (1) of S. 21 and sub-S. (2) was added by Act XXXI of 1928.

custody or be tried or punished for the offence after the expiry of two months from that date, unless his trial had already commenced before such expiry.

22. If any person liable to perform military service under this Act fails to comply with an order or notification under section 18 calling him out or embodying him for military service, any District Magistrate or Chief Presidency Magistrate may, on the application of the competent military authority or of an officer empowered by such authority in writing in that behalf, cause such person to be arrested and brought before him, and if the Magistrate is satisfied that such person has been duly required to perform military service, the Magistrate may, without prejudice to any penalty which such person may have incurred, make over such person in custody to the military authorities.

23. An enrolled person who refuses or without lawful excuse (the burden of proving which shall lie upon such person) neglects—

- (a) to comply with any order under section 8 ; or
- (b) to attend for medical examination, or to comply with the directions of the medical officer, as required by section 14 ; or
- (c) to notify any change of residence as required by section 16 ;

shall be punishable with fine which may extend to fifty rupees.

24. An enrolled person commits an offence if he, in circumstances when he is not subject to military law, does any of the following acts, namely :—

(1) when on parade or undergoing military training or wearing His Majesty's uniform—

- (a) strikes, or uses or offers violence to, or uses threatening or insubordinate language to, or behaves with contempt to, his superior officer ; or
- (b) disobeys any standing order of, or lawful command given by, his superior officer ; or
- (c) neglects to obey a general or garrison order made specially applicable to the Auxiliary Force, India, by the competent military authority ; or
- (d) is in a state of intoxication ; or
- (e) being a non-commissioned officer strikes or illtreats any person subject to military law or to this Act, or to the Indian Territorial Force Act, 1920, who is his subordinate in rank or position ;

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1920.

(2) without sufficient cause fails to appear at the place of parade at the time fixed or to attend at any place in his capacity as a member of the Auxiliary Force, India, when duly required so to attend, or when on parade without sufficient cause quits the ranks ;

(3) without sufficient cause fails to perform any part of the training which by or under this Act he is required to perform ;

(4) strikes, or uses or offers violence to, any person whether subject to military law or not in whose military custody he is placed, and whether such person is or is not his superior officer ;

(5) resists an escort whose duty it is to arrest him or detain him in military custody ;

(6) being under arrest or detention or otherwise in lawful military custody escapes or attempts to escape ;

(7) when in charge of any property belonging to Government or to a corps or unit of the Auxiliary Force, India, makes away with, or is concerned in making away with, any such property ;

(8) wilfully injures, or by culpable neglect loses or causes injury to, any such property as is mentioned in clause (7) ;

(9) wilfully illtreats a horse or other animal used in the public service ;

(10) knowingly furnishes a false return or report of the number or state of men under his command or charge or of any money, arms or ammunition, clothing, equipment, stores or other property in his charge ;

(11) through design or culpable neglect omits to make or send any return of any matter mentioned in clause (10) which it is his duty to make or send ;

(12) when it is his official duty to make a declaration respecting any matter, makes a declaration respecting such matter which he either knows or believes to be false or does not believe to be true ;

XLV/II of 1920. (13) knowingly makes against any person subject to military law or to this Act or to the Indian Territorial Force Act, 1920, an accusation which he either knows or believes to be false or does not believe to be true ;

(14) falsely personates any other person at any parade or on any occasion when such other person is required by or under this Act to do any act or attend at any place, or abets any such act of personation.

Punishment for offences under section 24. 25. (1) Any person committing any of the offences specified in sub-clauses (b), (c) and (d) of clause (1) or in clauses (2), (3), (8), (11) and (14) of section 24 shall be punishable with fine which may extend to two hundred rupees.

(2) Any person committing any other offence specified in section 24 shall be punishable with imprisonment which may extend to two months, or with fine which may extend to two hundred rupees or with both,

Dismissal. 26. The competent military authority may in his discretion dismiss any enrolled person from the Auxiliary Force, India.

Summary and minor punishments. 27. The Governor-General in Council may prescribe summary and minor punishments for offences under section 24 or for contravention of any rule or regulation made under this Act to which enrolled persons shall be liable without the intervention of a Criminal Court, and the officer or officers by whom and the circumstances in which and the extent to which such summary and minor punishments may be inflicted, and the manner in which any such punishment may be enforced :

Provided that no punishment involving any kind of imprisonment shall be imposed as a summary or minor punishment:

Provided further that no summary punishment shall be inflicted in any case in which the accused claims to be tried by a Criminal Court.

28. (1) The Local Government shall constitute for each prescribed military area one or more Advisory Committees each consisting of three or more members, of whom one shall be the competent military authority or a military officer appointed by him in this behalf, and the others shall be persons eligible for enrolment in the Auxiliary Force, India, within the meaning of section 4 who shall be appointed annually by or under the orders of, the Local Government.

(2) Any Advisory Committee constituted for a prescribed military area or a part thereof, as the case may be, which includes a Presidency town or any other place to which the Governor-General in Council may, by order in writing, declare this sub-section to apply, shall consist of not less than five members of whom not more than two shall be persons in the service of Government.

(3) The Governor-General in Council shall prescribe the duties, powers and procedure of Advisory Committees and, in particular, the matters in respect of which the competent military authority shall be bound to give effect to a recommendation of an Advisory Committee unless the Local Government otherwise directs.

29. The Governor-General in Council may constitute any corps or unit and may disband any corps or unit constituted under this Act.

30. (1) The Governor-General in Council may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers such rules may—

- (a) provide for the appointment of enrolling officers;
- (b) prescribe military areas for the purposes of this Act;
- (c) prescribe the manner in which and the conditions subject to which European British subject and other persons who are not British subjects may offer themselves for enrolment under this Act;
- (d) define the manner in which and the conditions under which persons or any class of persons liable to military service under this Act may be excused from being called out or embodied;
- (e) prescribe the military training to be undergone by persons liable to military training under section 6 but not to military service under section 7;
- (f) prescribe the rates of pay for, and provide for the grant of allowances to, persons liable to perform military service under this Act;

(g) prescribe for any military area which is a railway area or for any area beyond the limits of British India the authorities which shall be deemed respectively to be the Local Government and the District Magistrate for all or any of the purposes of this Act; and

(h) provide for any other matter which under this Act is to be or may be prescribed.

(3) Any rule made under this section may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

(4) The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition of previous publication.

(5) All rules made under this section shall be published in the Gazette of India and on such publication shall have effect as if enacted in this Act.

31. The Commander-in-Chief of His Majesty's forces in India may make regulations consistent with this Act and the rules made thereunder providing generally for details connected with the organization and personnel of the Auxiliary Force, India, and for the duties, equipment, military training, allowances and leave of enrolled persons.

Powers to make regulations.

32. For the purposes of sections 128, 130 and 131 of the Code of Criminal Procedure, 1898, all officers, non-commissioned officers and men liable to perform military service under this Act who have been appointed to a corps or unit shall be deemed to be officers, non-commissioned officers and soldiers, respectively, of His Majesty's Army.

V of 1898.

Certain persons subject to this Act to be deemed part of His Majesty's Army for certain purposes.

33. Save as otherwise provided by section 27, no offence under this Act shall be tried save by a Court not inferior to that of a Presidency Magistrate or Magistrate of the first-class.

Trial of offences.

34. No enrolled person shall be liable to pay any municipal or other tax in respect of a horse, bicycle, motor bicycle, motor car or other means of conveyance which he is authorised by a general or special order of the competent military authority to maintain in his capacity as a member of the Auxiliary Force, India.

Exemption from local taxation.

XI of 1878.

35. In section 1 of the Indian Arms Act, 1878, for the words and figures "a volunteer enrolled under the Indian Volunteers Act, 1869," the words and figures "a member of either of the forces constituted by the Indian Territorial Force Act, 1920, or the Auxiliary Force Act, 1920," and for the word "volunteer" the word "member," shall be substituted.

Amendment of section 1, Act XI of 1878.

36. On and from the date on which this Act comes into force, the enactments mentioned in Schedule II shall be repealed to the extent specified in the fourth column thereof.

Repeals.

SCHEDULE I.

(See sections, 9, 11, 12 and 15.)

TRAINING.

1. Preliminary—

- (a) for infantry ... 32 days, and the annual musketry course as laid down in regulations.
- (b) for other branches ... 40 days, and the annual musketry or gun course as laid down in regulations.

2. Periodical—

(1) Active Class—

- (a) for infantry ... 16 days in each training year, and the annual musketry course as laid down in regulations.
- (b) for other branches ... 20 days in each training year, and the annual musketry or gun course as laid down in regulations.

(2) First (A) Class Reserve—

- (a) for infantry ... 6 days in each training year, and the annual musketry course as laid down in regulations.
- (b) for other branches ... 10 days in each training year, and the annual musketry or gun course as laid down in regulations.

(3) Second (B) Class Reserve—

- (a) for infantry ... } The annual musketry course as laid
 (b) for other branches ... } down for this Class in regulations.

Note.—(Of. section 15).—A day consists of four hours of actual military drill or instruction, and may be made up of fractions of a day not more than four in number.

SCHEDULE II.
ENACTMENTS REPEALED.
(See section 36.)

Year.	Num-ber.	Short title.	Extent of repeal.
1869	XX	The Indian Volunteers Act, 1869	The whole.
1891	XII	The Amending Act, 1891 ...	So much of the Second Schedule as relates to the Indian Volunteers Act, 1869.
1896	X	The Indian Volunteers Act Amendment Act, 1896.	The whole.
1909	V	The Amending (Army) Act, 1909.	So much of the Schedule as relates to the India Volunteers Act, 1869.
1909	VI	The Indian Volunteers (Amendment) Act, 1909.	The whole.
1915	I	The Emergency Legislation Continuance Act, 1915.	So much of the Schedule as relates to the Indian Volunteers Ordinance, 1914.
1917	III	The Indian Defence Force Act, 1917.	The whole.
1918	VIII	The Indian Defence Force (Amendment) Act, 1918.	Do.
1918	XXI	The Indian Defence Force (Foreign Service) Amendment Act, 1918.	Do.
1919	VII	The Indian Defence Force (Amendment) Act, 1919.	Do.

Boilers Acts, 1923.

(ACT V OF 1923.)

[Passed on the 23rd February, 1923.]

An Act to consolidate and amend the law relating to steam-boilers.

WHEREAS it is expedient to consolidate and amend the law relating to steam-boilers; It is hereby enacted as follows :—

Short title, extent and commencement. 1. (1) This Act may be called the Indian Boilers Act, 1923.

(2) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas.

(3) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

- (a) "accident" means an explosion of a boiler or steam-pipe or any damage to a boiler or steam-pipe which is calculated to weaken the strength thereof so as to render it liable to explode;
- (b) "boiler" means any closed vessel exceeding five gallons in capacity which is used expressly for generating steam under pressure for use outside such vessel, and includes any mounting or other fitting attached to such vessel which is wholly or partly under pressure when steam is shut off;
- (c) "Chief Inspector" and "Inspector" mean, respectively, a person appointed to be a Chief Inspector and an Inspector under this Act;
- (d) "owner" includes any person using a boiler as agent of the owner thereof and any person using a boiler which he has hired or obtained on loan from the owner thereof;
- (e) "prescribed" means prescribed by regulations or rules made under this Act;
- (f) "steam-pipe" means any main pipe exceeding three inches in internal diameter through which steam passes directly from a boiler to a prime-mover or other first user, and includes any connected fitting of a steam-pipe; and
- (g) "structural alteration, addition or renewal" shall not be deemed to include any renewal or replacement of a petty nature when the part or fitting used for replacement is not inferior in strength, efficiency or otherwise to the replaced part or fitting.

Limitation of application.

3. (1) Nothing in this Act shall apply in the case of any boiler or steam-pipe—

- (a) in any steam-ship as defined in section 3 of the Indian Steamships Act, 1884, or in any steam-vessel as defined in section 2 of the Inland Steam-vessels Act, 1917; or VII of I of 1917.
- (b) belonging to or under the control of His Majesty's Navy or the Royal Indian Marine Service.

(2) The Governor-General in Council may, by notification in the Gazette of India, declare that the provisions of this Act shall not apply in the case of boilers or steam-pipes, or of any specified class of boilers or steam-pipes, belonging to or under the control of any railway administered by the Government or by any railway company as defined in clause (5) of section 3 of the Indian Railways Act, 1890. IX of 1890.

4. The Governor-General in Council may, by notification in the Gazette of India, exclude any specified area from the operation of all or any specified provisions of this Act.

Power to limit extent.

6. (1) The Local Government may appoint such persons as it thinks fit to be Inspectors for the province for the purposes of this Act, and may define the local limits within which each Inspector shall exercise the powers and perform the duties conferred and imposed on Inspectors by or under this Act.

(2) The Local Government shall likewise appoint a person to be Chief Inspector for the province, who may, in addition to the powers and duties conferred or imposed on the Chief Inspector by or under this Act, exercise any power or perform any duty so conferred or imposed on Inspectors.

(3) Every Chief Inspector and every Inspector shall be deemed XLV of 1860. to be a public servant within the meaning of the Indian Penal Code.

Prohibition of use of unregistered or uncertificated boiler.

6. Save as otherwise expressly provided in this Act, no owner of a boiler shall use the boiler or permit it to be used.

- (a)** unless it has been registered in accordance with the provisions of this Act ;
- (b)** in the case of any boiler which has been transferred from one province to another, until the transfer has been reported in the prescribed manner ;
- (c)** unless a certificate or provisional order authorising the use of the boiler is for the time being in force under this Act ;
- (d)** at a pressure higher than the maximum pressure recorded in such certificate or provisional order ;
- (e)** where the Local Government has made rules requiring that boilers shall be in charge of persons holding certificates of competency, unless the boiler is in charge of a person holding the certificate required by such rules :

Provided that any boiler registered, or any boiler certified or licensed, under any Act hereby repealed shall be deemed to have been registered or certified, as the case may be, under this Act :

Provided further, that, until the expiration of twelve months from the commencement of this Act, nothing in this section shall be deemed to prohibit the use of any boiler in any local area in which the registration of, or a certificate or license for the use of, a boiler was not previously required by law..

7. (1) The owner of any boiler which is not registered under the provisions of this Act may apply to the Inspector to have the boiler registered. Every such application shall be accompanied by the prescribed fee.

(2) On receipt of an application under sub-section (1), the Inspector shall fix a date, within thirty days or such shorter period as may be prescribed from the date of the receipt, for the examination of the boiler and shall give the owner thereof not less than ten days' notice of the date so fixed.

(3) On the said date the Inspector shall proceed to measure and examine the boiler and to determine the prescribed manner the maximum pressure, if any, at which such boiler may be used, and shall report the result of the examination to the Chief Inspector in the prescribed form.

(4) The Chief Inspector, on receipt of the report may—

(a) register the boiler and assign a register number thereto either forthwith or after satisfying himself that any structural alteration, addition or renewal which he may deem necessary has been made in or to the boiler or any steam-pipe attached thereto, or

(b) refuse to register the boiler :

Provided that where the Chief Inspector refuses to register a boiler, he shall forthwith communicate his refusal to the owner of the boiler together with the reasons therefor.

(5) The Chief Inspector shall, on registering the boiler, order the issue to the owner of a certificate in the prescribed form authorising the use of the boiler for a period not exceeding twelve months at a pressure not exceeding such maximum pressure as he thinks fit and as is in accordance with the regulations made under this Act.

(6) The Inspector shall forthwith convey to the owner of the boiler the orders of the Chief Inspector and shall in accordance therewith issue to the owner any certificate of which the issue has been ordered, and, where the boiler has been registered, the owner shall within the prescribed period cause the register number to be permanently marked thereon in the prescribed manner.

Renewal of certificate.

8. (1) A certificate authorising the use of a boiler shall cease to be in force—

- (a) on the expiry of the period for which it was granted ; or
- (b) when any accident occurs to the boiler ; or
- (c) when the boiler is moved, the boiler not being a vertical boiler the heating surface of which is less than two hundred square feet, or a portable or vehicular boiler ; or
- (d) when any structural alteration, addition or renewal is made in or to the boiler ; or
- (e) if the Chief Inspector in any particular case so directs, when any structural alteration, addition or renewal is made in or to any steam-pipe attached to the boiler ; or
- (f) on the communication to the owner of the boiler of an order of the Chief Inspector or Inspector prohibiting its use on the ground that it or any steam-pipe attached thereto is in a dangerous condition.

(2) Where an order is made under clause (f) of sub-section (1), the grounds on which the order is made shall be communicated to the owner with the order.

(3) When a certificate ceases to be in force, the owner of the boiler may apply to the Inspector for a renewal thereof for such period not exceeding twelve months as he may specify in the application.

(4) An application under sub-section (3) shall be accompanied by the prescribed fee and, on receipt thereof, the Inspector shall fix a date, within thirty days or such shorter period as may be prescribed from the date of the receipt, for the examination of the boiler and shall give the owner thereof not less than ten days' notice of the date so fixed :

Provided that, where the certificate has ceased to be in force owing to the making of any structural alteration, addition or renewal, the Chief Inspector may dispense with the payment of any fee.

(5) On the said date the Inspector shall examine the boiler in the prescribed manner, and if he is satisfied that the boiler and the steam-pipe or steam-pipes attached thereto are in good condition shall issue a renewed certificate authorising the use of the boiler for such period not exceeding twelve months and at a pressure not exceeding such maximum pressure as he thinks fit and as is in accordance with the regulations made under this Act :

Provided that if the Inspector—

(a) proposes to issue any certificate—

- (i) having validity for a less period than the period entered in the application, or
- (ii) increasing or reducing the maximum pressure at which the boiler may be used, or

(b) proposes to order any structural alteration, addition or renewal to be made in or to the boiler or any steam-pipe attached thereto, or

(c) is of opinion that the boiler is not fit for use,

the Inspector shall, within forty-eight hours of making the examination, inform the owner of the boiler in writing of his opinion and the reasons therefor, and shall forthwith report the case for orders to the Chief Inspector.

(6) The Chief Inspector, on receipt of a report under sub-section (5), may, subject to the provisions of this Act and of the regulations made hereunder, order the renewal of the certificate in such terms and on such conditions, if any, as he thinks fit, or may refuse to renew it :

Provided that where the Chief Inspector refuses to renew a certificate he shall forthwith communicate his refusal to the owner of boiler, together with the reasons therefor.

(7) Nothing in this section shall be deemed to prevent an owner of a boiler from applying for a renewed certificate therefor at any time during the currency of a certificate.

9. Where the Inspector reports the case of any boiler to the Chief
Provisional orders, Inspector under sub-section (3) of section 7 or sub-section (5) of section 8, he may, if the boiler is not a boiler the use of which has been prohibited under clause (f) of sub-section (1)

of section 8, grant to the owner thereof a provisional order in writing permitting the boiler to be used at a pressure not exceeding such maximum pressure as he thinks fit and as is in accordance with the regulations made under this Act pending the receipt of the orders of the Chief Inspector. Such provisional order shall cease to be in force—

- (a) on the expiry of six months from the date on which it is granted, or
- (b) on receipt of the orders of the Chief Inspector, or
- (c) in any of the cases referred to in clauses (b), (c), (d), (e) and (f) of sub-section (1) of section 8,

and on so ceasing to be in force shall be surrendered to the Inspector.

10. (1) Notwithstanding anything hereinbefore contained, when the period of a certificate relating to a boiler has expired, the owner shall, provided that he has applied before the expiry of that period for a renewal of the certificate, be entitled to use the boiler at the maximum pressure entered in the former certificate pending the issue of orders on the application.

Use of boiler pending grant of certificate.

(2) Nothing in sub-section (1) shall be deemed to authorise the use of a boiler in any of the cases referred to in clauses (b), (c), (d), (e) and (f) of sub-section (1) of section 8 occurring after the expiry of the period of the certificate.

Revocation of certificate or provisional order.

11. The Chief Inspector may at any time withdraw or revoke any certificate or provisional order on the report of an Inspector or otherwise—

- (a) if there is reason to believe that the certificate or provisional order has been fraudulently obtained or has been granted erroneously or without sufficient examination; or
- (b) if the boiler in respect of which it has been granted has sustained injury or has ceased to be in good condition; or
- (c) where the Local Government has made rules requiring that boilers shall be in charge of persons holding certificates of competency, if the boiler is in charge of a person not holding the certificate required by such rules; or
- (d) where no such rules have been made, if the boiler is in charge of a person who is not, having regard to the condition of the boiler, in the opinion of the Chief Inspector competent to have charge thereof :

Provided that where the Chief Inspector withdraws or revokes a certificate or provisional order on the ground specified in clause (d), he shall communicate to the owner of the boiler his reasons in writing for the withdrawal or revocation, and the order shall not take effect until the expiry of thirty days from the receipt of such communication.

12. No structural alteration, addition or renewal shall be made in or to any boiler registered under this Act unless such alteration, addition or renewal has been sanctioned in writing by the Chief Inspector.

Alterations and renewals to boilers.

13. Before the owner of any boiler registered under this Act makes any structural alteration, addition or renewal in or to any steam-pipe attached to the boiler, he shall transmit to the Chief Inspector a report in writing of his intention, and shall send therewith such particulars of the proposed alteration, addition or renewal as may be prescribed.

Alterations and renewals to steam-pipes.

14. (1) On any date fixed under this Act for the examination of a boiler, the owner thereof shall be bound—

Duty of owner at examination.

- (a) to afford to the Inspector all reasonable facilities for the examination and all such information as may reasonably be required of him ;
- (b) to have the boiler properly prepared and ready for examination in the prescribed manner ; and
- (c) in the case of an application for the registration of a boiler, to provide such drawings, specifications, certificates and other particulars as may be prescribed.

(2) If the owner fails, without reasonable cause, to comply with the provisions of sub-section (1), the Inspector shall refuse to make the examination and shall report the case to the Chief Inspector who shall, unless sufficient cause to the contrary is shown, require the owner to file a fresh application under section 7 or section 8, as the case may be, and may forbid him to use the boiler notwithstanding anything contained in section 10.

15. The owner of any boiler who holds a certificate or provisional order relating thereto shall, at all reasonable times during the period for which the certificate or order is in force, be bound to produce the same when called upon to do so by a District Magistrate, Commissioner of Police or Magistrate of the first class having jurisdiction in the area in which the boiler is for the time being, or by the Chief Inspector or by an Inspector or by any Inspector appointed under the Indian Factories Act, 1911, or by any person specially authorised in writing by a District Magistrate or Commissioner of Police.

Production of certificates, etc.

XII of 1911.

16. If any person becomes the owner of a boiler during the period for which a certificate or provisional order relating thereto is in force, the preceding owner shall be bound to make over to him the certificate or provisional order.

Transfer of certificates, etc.

17. An Inspector may, for the purpose of inspecting or examining a boiler or any steam-pipe attached thereto or of seeing that any provision of this Act or of any regulation or rule made hereunder has been or is being observed, at all reasonable times enter any place or building within the limits of the area for which he has been appointed in which he has reason to believe that a boiler is in use.

Powers of entry.

18. (1) If any accident occurs to a boiler or steam-pipe, the owner or person in charge thereof shall, within twenty-four hours of the accident, report the same in writing to the Inspector. Every such report shall contain a true description of the nature of the accident and of the injury, if any, caused thereby to the boiler or to the steam-pipe or to any person, and shall be in sufficient detail to enable the Inspector to judge of the gravity of the accident.

(2) Every person shall be bound to answer truly to the best of his knowledge and ability every question put to him in writing by the Inspector as to the cause, nature or extent of the accident.

Appeals to Chief Inspector. 19. Any person considering himself aggrieved by—

- (a) an order made or purporting to be made by an Inspector in the exercise of any power conferred by or under this Act, or
- (b) a refusal of an Inspector to make any order or to issue any certificate which he is required or enabled by or under this Act to make or issue,

may, within thirty days from the date on which such order or refusal is communicated to him, appeal against the order or refusal to the Chief Inspector.

Appeals to appellate authority. 20. Any person considering himself aggrieved by an original or appellate order of the Chief Inspector—

- (a) refusing to register a boiler or to grant or renew a certificate in respect of a boiler; or
- (b) refusing to grant a certificate having validity for the full period applied for; or
- (c) refusing to grant a certificate authorising the use of a boiler at the maximum pressure desired; or
- (d) withdrawing or revoking a certificate or provisional order; or
- (e) reducing the amount of pressure specified in any certificate or the period for which such certificate has been granted; or
- (f) ordering any structural alteration, addition or renewal to be made in or to a boiler or steam-pipe, or refusing sanction to the making of any structural alteration, addition or renewal in or to a boiler,

may, within thirty days of the communication to him of such order, lodge with the Chief Inspector an appeal to an appellate authority to be constituted by the Local Government under this Act.

21. An order of an appellate authority under section 20 and, save as otherwise provided in sections 19 and 20, an order of the Chief Inspector or of an Inspector shall be final and shall not be called in question in any Court.

Minor penalties. 22. Any owner of a boiler who refuses or without reasonable excuse neglects—

- (i) to surrender a provisional order as required by section 9, or
- (ii) to produce a certificate or provisional order when duly called upon to do so under section 15, or
- (iii) to make over to the new owner of a boiler a certificate or provisional order as required by section 16,

shall be punishable with fine which may extend to one hundred rupees.

23. Any owner of a boiler who, in any case in which a certificate or provisional order is required for the use of the boiler under this Act, uses the boiler either without any such certificate or order being in force or at a higher pressure than that allowed thereby, shall be punishable with fine which may extend to five hundred rupees, and, in the case of a continuing offence, with an additional fine which may extend to one hundred rupees for each day after the first day in regard to which he is convicted of having persisted in the offence.

Other penalties.

24. Any person who—

- (a) uses or permits to be used a boiler of which he is the owner and which has been transferred from one province to another without such transfer having been reported as required by section 6, or
- (b) being the owner of a boiler fails to cause the register number allotted to the boiler under this Act to be marked on the boiler as required by sub-section (6) of section 7, or
- (c) makes any structural alteration, addition or renewal in or to a boiler without first obtaining the sanction of the Chief Inspector when so required by section 12, or to a steam-pipe without first informing the Chief Inspector, when so required by section 13, or
- (d) fails to report an accident to a boiler or steam-pipe when so required by section 18, or
- (e) tampers with a safety valve of a boiler so as to render it inoperative at the maximum pressure at which the use of the boiler is authorised under this Act,

shall be punishable with fine which may extend to five hundred rupees.

25. (1) Whoever removes, alters, defaces, renders invisible or otherwise tampers with the register number marked on a boiler in accordance with the provisions of this Act or any Act repealed hereby, shall be punishable with fine which may extend to five hundred rupees.

Penalty for tampering with register mark.

(2) Whoever fraudulently marks upon a boiler a register number which has not been allotted to it under this Act or any Act repealed hereby, shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

26. No prosecution for an offence made punishable by or under this Act shall be instituted except within six months from the date of the commission of the offence, and no such prosecution shall be instituted without the previous sanction of the Chief Inspector.

Limitation and previous sanction for prosecutions.

27. No offence made punishable by or under this Act shall be tried by a Court inferior to that of a Presidency Magistrate or a Magistrate of the first class.

Trial of offences.

28. The Governor-General in Council may, by notification in the Gazette of India, make regulations consistent with this Act for all or any of the following purposes, namely :—

Power to make regulations.

- (a) for laying down the standard conditions in respect of material, design and construction which shall be required for the purpose of enabling the registration and certification of a boiler under this Act ;
- (b) for prescribing the method of determining the maximum pressure at which a boiler may be used ;
- (c) for regulating the registration of boilers, prescribing the fees payable therefor, the drawings, specifications, certificates and particulars to be produced by the owner, the method of preparing a boiler for examination, the form of the Inspector's report thereon, the method of marking the register number, and the period within which such number is to be marked on the boiler ;
- (d) for regulating the inspection and examination of boilers and steam-pipes, and prescribing forms of certificates therefor ;
- (e) for ensuring the safety of persons working inside a boiler ; and
- (f) for providing for any other matter which is not, in the opinion of the Governor-General in Council, a matter of merely local or provincial importance.

29. The Local Government may, by notification in the local official Gazette, make rules consistent with this Act and the regulations made thereunder for all or any of the following purposes, namely :—

Power to make rules.

- (a) for prescribing the qualifications and duties of the Chief Inspector and of Inspectors, for regulating their salary, allowances and conditions of service, for prescribing or constituting authorities to which they shall respectively be subordinate, and the limits of the administrative control to be exercised by such authorities ;
- (b) for regulating the transfer of boilers ;
- (c) for providing for the registration and certification of boilers in accordance with the regulations made under this Act ;

- (d) for requiring boilers to be in charge of persons holding certificates of competency, and for prescribing the conditions on which such certificates may be granted ;
- (e) for prescribing the times within which Inspectors shall be required to examine boilers under section 7 or section 8 ;
- (f) for prescribing the fees payable for the issue or renewed certificates and the method of determining the amount of such fees in each case ;
- (g) for regulating inquiries into accidents ;
- (h) for constituting the appellate authority referred to in section 20, and for determining its powers and procedure ;
- (i) for determining the mode of disposal of fees, costs and penalties levied under this Act ; and
- (j) generally to provide for any matter which is, in the opinion of the Local Government, a matter of merely local importance in the province :

Provided that the previous sanction of the Governor General in Council shall be required to the making of any rule under clause (j).

30. Any regulation or rule made under section 28 or section 29 may provide that a contravention thereof shall be punishable with fine which may extend to one hundred rupees.

Penalty for breach of rules.

31. (1) The power to make regulations and rules conferred by sections 28 and 29 shall be subject to the condition of the regulations and rules being made after previous publication.

Publication of regulations and rules.

(2) Regulations and rules so made shall be published in the Gazette of India and the local official Gazette, respectively, and, on such publication, shall have effect as if enacted in this Act.

32. All fees, costs and penalties levied under this Act shall be recoverable as arrears of land-revenue.

Recovery of fees, etc.

33. Save as otherwise expressly provided, this Act shall apply to boilers and steam-pipes belonging to the Crown.

Applicability to the Crown.

34. In case of any emergency, the Local Government may, by general or special order in writing, exempt any boiler or steam-pipe from the operation of all or any of the provisions of this Act.

Power to suspend in case of emergency.

35. On and from the commencement of this Act, the enactments mentioned in the Schedule shall be repealed to the extent specified in the fourth column thereof :

Repeal of enactments.

Provided that any Chief Inspector or Inspector appointed under any Act so repealed shall be deemed to have been appointed under this Act.

THE SCHEDULE.

(See section 35.)

ENACTMENTS REPEALED.

Year.	No.	Short title.	Extent of repeal.
		<i>Acts of the Governor-General in Council.</i>	
1903	I	The Amending Act, 1903 ...	So much of the First Schedule as relates to the Bengal Steam-boilers and Prime-movers Act, 1879.
1920	XXXVIII	The Devolution Act, 1920 ...	So much of the First Schedule as relates to the Bengal Steam-boilers and Prime-movers Act, 1879.
		<i>Madras Acts.</i>	
1893	III	The Madras Steam-boilers and Prime-movers Act, 1893.	The whole.
1904	I	The Madras Steam-boilers and Prime-movers (Amendment) Act, 1904.	The whole.
1909	VII	The Madras Steam-boilers and Prime-movers (Amendment) Act, 1909.	The whole.
		<i>Bombay Acts.</i>	
1917	V	The Bombay Boiler Inspection Act, 1917.	The whole.
1920	X	The Bombay Boiler Inspection (Amendment) Act, 1920.	The whole.
		<i>Bengal Acts.</i>	
1879	III	The Bengal Steam-boilers and Prime-movers Act, 1879.	The whole.
1915	II	The Bengal Steam-boilers and Prime-movers (Amendment) Act, 1915.	The whole.
		<i>United Provinces Act.</i>	
1915	III	The United Provinces Steam-boilers Act, 1915.	The whole.
		<i>Punjab Act.</i>	
1902	II	The Punjab Steam-boilers and Prime-movers Act, 1902.	The whole.
		<i>Central Provinces Acts.</i>	
1907	II	The Central Provinces Boiler Inspection Act, 1907.	The whole.
1919	IV	The Central Provinces Boiler Inspection (Amendment) Act, 1919.	The whole.
		<i>Burma Act.</i>	
1910	I	The Burma Steam-boilers and Prime-movers Act, 1910.	The whole.

Cantonments Act, 1924.

(ACT II OF 1924.)

[Passed on the 16th February, 1924.]

An Act to consolidate and amend the law relating to the administration of cantonments.

WHEREAS it is expedient to consolidate and amend the law relating to the administration of cantonments; It is hereby enacted as follows :—

CHAPTER I.**PRELIMINARY.**

Short title, extent
and commence-
ment.

1. (1) This Act may be called the Cantonments Act, 1924.

(2) It extends to the whole of British India, including British Baluchistan.

(3) The Governor-General in Council may, by notification in the Gazette of India, direct that this Act or any provisions thereof which he may specify, shall come into force on such date as he may appoint in this behalf.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(i) "Assistant Health Officer" means the medical officer appointed by the Officer Commanding the District to be the Assistant Health Officer for a cantonment;

(ii) "Board" means a Cantonment Board constituted 'under this Act;

(iii) "brigade area" means one of the brigade areas, whether occupied by a brigade or not, into which India is for military purposes for the time being divided, and includes for all or any of the purposes of this Act any area which the Governor-General in Council may, by notification in the Gazette of India, declare to be a brigade area for such purpose or purposes;

(iv) "building" means any house, hut, out-house, shed, stable or other roofed structure, for whatever purpose or of whatever material constructed, or any part thereof, and includes a well, but does not include a tent or other portable and temporary shelter;

(v) "Cantonment Authority" means a Board or, in the case of a cantonment where a Board has not been constituted or has ceased to exist, the Commanding Officer of the cantonment;

(vi) "casual election" means an election held to fill a casual vacancy;

(vii) "casual vacancy" means a vacancy occurring otherwise than by efflux of time in the office of an elected member of a Board;

(viii) "Command" means one of the Commands into which India is for military purposes for the time being divided, and includes any area which the Governor-General in Council may, by notification in the Gazette of India, declare to be a Command for all or any of the purposes of this Act;

(ix) "Commanding Officer of the cantonment" means the military officer for the time being in command of the forces in a cantonment, or, if that officer is the Officer Commanding the District, the military officer who would be in command of those forces in the absence of the Officer Commanding the District ;

(x) "dairy" includes any farm, cattle-shed, milkstore, milk shop or other place from which milk is supplied or in which milk is kept for purposes of sale or is manufactured for sale into butter, ghee, cheese or curds, and, in relation to a dairyman who does not occupy any premises for the sale of milk, includes any place in which he keeps the vessels used by him for the storage or sale of milk ;

(xi) "dairyman" includes the keeper of a cow, buffalo, goat, ass or other animal, the milk of which is offered or is intended to be offered for sale for human consumption, and any purveyor of milk and any occupier of a dairy ;

(xii) "Executive Engineer" means the Public Works officer of that grade, or the Military Works officer of the corresponding grade, having charge of the Military Works in a cantonment, and includes the officer of whatever grade in immediate executive engineering charge of a cantonment ;

(xiii) "Executive Officer" means the person appointed under this Act to be the Executive Officer of a cantonment ;

(xiv) "Health Officer" means the senior executive medical officer in military employ on duty in a cantonment ;

(xv) "hill cantonment" means any cantonment declared by the Local Government, by notification in the local official Gazette, to be a hill cantonment for the purposes of this Act ;

(xvi) "hut" means any building, no material portion of which above the plinth level is constructed of masonry or of squared timber framing or of iron framing ;

(xvii) "infectious or contagious disease" means cholera, leprosy, enteric fever, smallpox, tuberculosis, diphtheria, plague, influenza, venereal disease, and any other epidemic, endemic or infectious disease which the Local Government may, by notification in the local official Gazette, declare to be an infectious or contagious disease for the purposes of this Act ;

(xviii) "inhabitant", in relation to a cantonment, or local area, means any person ordinarily residing or carrying on business or owning or occupying immoveable property therein, and in case of a dispute means any person declared by the District Magistrate to be an inhabitant ;

(xix) "intoxicating drug" means opium, ganja, bang, charas and any preparation or admixture thereof, and includes any other intoxicating substance, or liquid which the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, declare to be an intoxicating drug for the purposes of this Act ;

(xx) "market" includes any place where persons assemble for the purpose of selling meat, fish, fruit, vegetables, live-stock or any other article of food ;

(xxi) "military officer" means—

44 & 45 Vict.,
c. 58.
VIII of 1911.

(a) a person who, being an officer within the meaning of the Army Act or the Indian Army Act, 1911, or the Air Force Act, is commissioned and in pay as an officer doing military or air force duty with His Majesty's military or air forces, or is an officer doing such duty in any arm, branch or part of those forces ; or

44 & 45 Vict.,
c. 58.
VIII of 1911.

(b) a person doing military or air force duty as a warrant officer with either of those forces or with any arm, branch, or part thereof, whether he is or is not an officer within the meaning of the Army Act or the Indian Army Act, 1911, or the Air Force Act ;

(xxii) "nuisance" includes any act, omission, place or thing which causes or is likely to cause injury, danger, annoyance or offence to the sense of sight, smell or hearing, or which is or may be dangerous to life or injurious to health or property ;

(xxiii) "occupier" includes an owner in occupation of, or otherwise using, his own land or building ;

(xxiv) "Officer Commanding the District" means the Officer Commanding any one of the districts into which India is for military purposes for the time being divided, or any brigade area which does not form part of any such district, or any area which the Governor-General in Council may, by notification in the Gazette of India, declare to be such a district for all or any of the purposes of this Act ;

(xxv) "ordinary election" means an election held to fill a vacancy in the office of an elected member of a Board arising by efflux of time ;

(xxvi) "owner" includes any person who is receiving or is entitled to receive the rent of any building or land whether on his own account or on behalf of himself and others or as an agent or trustee, or who would so receive the rent or be entitled to receive it if the building or land were let to a tenant ;

(xxvii) "party wall" means a wall forming part of a building and used or constructed to be used for the support or separation of adjoining buildings belonging to different owners, or constructed or adapted to be occupied by different persons ;

(xxviii) "private market" means a market which is not maintained by a Cantonment Authority and which is licensed by a Cantonment Authority under the provisions of this Act ;

(xxix) "private slaughter-house" means a slaughter-house which is not maintained by a Cantonment Authority and which is licensed by a Cantonment Authority under the provisions of this Act ;

(xxx) "public market" means a market maintained by a Cantonment Authority ;

(xxxi) "public place" means any place which is open to the use and enjoyment of the public, whether it is actually used or enjoyed by the public or not ;

(xxxii) "public slaughter-house" means a slaughter-house maintained by a Cantonment Authority ;

(xxiii) "shed" means a slight or temporary structure for shade or shelter ;

(xxiv) "slaughter-house" means any place ordinarily used for the slaughter of animals for the purpose of selling the flesh thereof for human consumption ;

(xxv) "soldier" means a person who is a soldier or airman within the meaning of the Army Act or the Air Force Act, or is subject to the Indian Army Act, 1911, and who is not a military officer ;

44 & 45 Vict.
c. 58.
VIII of 1911.

(xxvi) "spirituous liquor" means any fermented liquor, any wine, or any alcoholic liquid obtained by distillation or the sap of any kind of palm tree, and includes any other liquid containing alcohol which the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, declare to be a spirituous liquor for the purposes of this Act ;

(xxvii) "street" includes any way, road, lane, square, court, alley, passage or open space in a cantonment, whether a thoroughfare or not and whether built upon or not, over which the public have a right-of-way and also the road-way or foot-way over any bridge or causeway ;

(xxviii) "vehicle" means a wheeled conveyance of any description which is capable of being used on a street, and includes a motor-car, motor lorry, motor-omnibus, cart, locomotive, tram-car, hand-cart, truck, motor-cycle, bicycle, tricycle and rickshaw ; and

(xxix) "water-works" includes all lakes, tanks, streams, cisterns, springs, pumps, wells, reservoirs, aqueducts, water-trucks, sluices, mains, pipes, culverts, hydrants, stand-pipes, and conduits, and all machinery-lands, buildings, bridges and things, used for, or intended for the purpose of, supplying water to a cantonment.

CHAPTER II.

DEFINITION AND DELIMITATION OF CANTONMENTS.

3. (1) The Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, declare any place or places in which any part of His Majesty's regular forces or regular air force is quartered or which, being in the vicinity of any such place or places, is or are required for the service of such forces to be a cantonment for the purposes of this Act and of all other enactments for the time being in force, and with the like sanction, may, by a like notification, declare that any cantonment shall cease to be a cantonment.

(2) The Local Government, with the like sanction, may, by a like notification, define the limits of any cantonment for the aforesaid purposes.

4. (1) The Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, declare its intention to include within a cantonment any local area situated in the immediate vicinity thereof or to exclude from a cantonment any local area comprised therein.

(2) any inhabitant of a cantonment or local area in respect of which a notification has been published under sub-section (1) may, within six weeks from the date of the notification, submit in writing to the Local Government through the Officer Commanding-in-Chief, the Command, an objection to the notification, and the Local Government shall take such objection into consideration.

(3) On the expiry of six weeks from the date of the notification, the Local Government may, with the previous sanction of the Governor-General in Council, after considering the objections, if any, which have been submitted under sub-section (2), by notification in the local official Gazette, include the local area in respect of which the notification was published under sub-section (1), or any part thereof, in the cantonment or, as the case may be, exclude such area or any part thereof from the cantonment.

8. When, by a notification under section 4, any local area is included in a cantonment, such area shall thereupon become subject to this Act and to all other enactments for the time being in force throughout the cantonment and to all notifications, rules, regulations, by-laws, orders and directions issued are made thereunder.

The effect of including area in cantonment.

6. (1) When, by a notification under section 3, any cantonment ceases to be a cantonment and the local area comprised therein is immediately placed under the control of the local authority, the balance of the cantonment fund and other property vesting in the Cantonment Authority shall vest in such local authority, and the liabilities of the Cantonment Authority shall be transferred to such local authority.

Disposal of cantonment fund when area ceases to be a cantonment.

(2) When, in like manner, any cantonment ceases to be a cantonment and the local area comprised therein is not immediately placed under the control of a local authority, the balance of the cantonment fund and other property vesting in the Cantonment Authority shall vest in His Majesty, and the liabilities of the Cantonment Authority shall be transferred to the Secretary of State in Council.

7. (1) When, by a notification under section 4, any local area forming part of a cantonment ceases to be under the control of a particular Cantonment Authority and is immediately placed under the control of some other local authority, such portion of the cantonment fund and other property vesting in the Cantonment Authority, and such portion of the liabilities of the Cantonment Authority, as the Governor-General in Council may, by general or special order, direct, shall be transferred to that other local authority.

Disposal of cantonment fund when area ceases to be included in a cantonment.

(2) When, in like manner, any local area forming part of a cantonment ceases to be under the control of a particular Cantonment Authority and is not immediately placed under the control of some other local authority, such portion of the cantonment fund and other property

vesting in the Cantonment Authority shall vest in His Majesty, and such portion of the liabilities of the Cantonment Authority shall be transferred to the Secretary of State in Council, as the Governor-General in Council may, by general or special order, direct.

8. Any cantonment fund or portion of a cantonment fund or other property of a Cantonment Authority vesting in His Majesty under the provisions of section 6 or section 7 shall be applied in the first place to satisfy any liabilities of the Cantonment Authority transferred under such provisions to the Secretary of State in Council, and in the second place for the benefit of the inhabitants of the local area which has ceased to be a cantonment or, as the case may be, part of a cantonment.

9. The Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, exclude from the operation of any part of this Act the whole or any part of a cantonment, or direct that any provision of this Act shall, in the case of any cantonment specified in the notification in which there is no Board, apply with such modifications as may be so specified.

CHAPTER III.

CANTONMENT AUTHORITIES AND CANTONMENT BOARDS.

Cantonment Authorities.

Cantonment authority and Executive Officer.

10. (1) For every cantonment beyond the limits of a Presidency-town there shall be a Cantonment Authority and an Executive Officer.

(2) Where a cantonment is situated within the limits of a Presidency-town, the functions assigned to any authority by or under this Act shall, subject to the provisions of any other law for the time being in force, be discharged by such authority as the Local Government may, by notification in the local official Gazette, appoint in this behalf.

Governor-General in Council to decide whether Cantonment Board shall be constituted.

11. The Governor General in Council may, by notification in the Gazette of India, order in respect of any cantonment that a Cantonment Board shall be constituted therein, and may, by a like notification, order that any Board so constituted shall cease to exist.

12. (1) Every Board shall, by the name of the Board of the place by reference to which the cantonment is known, be a body corporate having perpetual succession and a common seal with power to acquire and hold property both moveable and immovable and to contract and shall, by the said name, sue and be sued.

(2) In the case of any cantonment where there is no Board, the Cantonment Authority shall be a corporation sole by the name of the

Cantonment Authority of the place by reference to which the cantonment is known, and as such Cantonment Authority shall have perpetual succession and an official seal with power to acquire and hold property both moveable and immoveable and to contract and shall, by the said name, sue and be sued.

13. The Executive Officer of every cantonment shall be appointed by the Governor General in Council, or by such person as the Governor General in Council may authorise in this behalf, and, in a cantonment where there is a Board, shall be the Secretary, but shall not be a member, thereof :

Provided that, in the case of any cantonment where there is a Board, the Governor General in Council may direct that the Executive Officer may be appointed by the Board subject to such conditions as the Governor General in Council may impose.

14. (1) Every Board shall consist of the following members, namely :—

- (a) the Commanding Officer of the cantonment ;
- (b) a Magistrate of the first class nominated by the District Magistrate ;
- (c) the Health Officer ;
- (d) the Executive Engineer ;
- (e) such military officers not exceeding four in number as may be nominated by the Commanding Officer of the cantonment by order in writing :

Provided that the Commanding Officer of the cantonment may, if he thinks fit, with the sanction of the Officer Commanding the District, nominate in place of any military officer whom he is empowered to nominate under this clause any person, whether in the service of the Government or not, who is ordinarily resident in the cantonment or in the vicinity thereof, to represent any interest or community not otherwise represented on the Board ;

- (f) such number of members elected under this Act as is equal to the number of members appointed or nominated by or under clauses (b) to (e) :

Provided that, in the case of any cantonment—

- (a) in which the total civil population is, according to the latest census, less than two thousand five hundred in number, or
- (b) which is situate in the North-West Frontier Province or in British Baluchistan,

the Local Government may, by notification in the local official Gazette, declare that the provisions of clauses (e) and (f) shall not apply and may, with the concurrence of the Officer Commanding-in-Chief, the Command, by a like notification, nominate as members of the Board not more than three persons who are resident in the cantonment or in the vicinity thereof and who either own land or house property in the cantonment or carry on business therein.

(2) Every election, nomination or appointment of a member of a Board and every vacancy in the membership thereof shall be notified by the Local Government in the local official Gazette.

15. (1) Save as otherwise provided in this section the term of office of a member of a Board shall be three years and shall commence from the date of the notification of his election or nomination under sub-section (2) of section 14, or from the date on which the vacancy has occurred in which he is elected or nominated whichever date is later.

(2) The term of office of an *ex-officio* member of a Board shall continue so long as he holds the office in virtue of which he is such a member.

(3) The term of office of a member elected to fill a casual vacancy shall commence from the date of election, and shall continue so long only as the member in whose place he is elected would have been entitled to hold office if the vacancy had not occurred.

(4) An outgoing member shall, unless the Local Government otherwise directs, continue in office until the election or nomination of his successor is notified under sub-section (2) of section 14.

(5) Any outgoing member may, if qualified, be re-elected or re-nominated.

16. (1) Vacancies arising by efflux of time in the office of an elected member of a Board shall be filled by an ordinary election to be held on such date as the Local Government may, by notification in the local official Gazette, direct.

(2) A casual vacancy shall be filled by a casual election the date of which shall be fixed by the Local Government by notification in the local official Gazette, and shall be, as soon as may be, after the occurrence of the vacancy :

Provided that no casual election shall be held to fill a vacancy occurring within three months of any date on which the vacancy will occur by efflux of time, but such vacancy shall be filled at the next ordinary election.

17. (1) If from any cause at an ordinary election no member is elected or if the elected member is unwilling to serve on the Board, the outgoing member shall, if qualified and willing to serve, be deemed to have been re-elected.

(2) If in any such case the outgoing member is not qualified or is not willing to serve, or if at a casual election no member is elected, the vacancy shall be filled by nomination by the Local Government with the concurrence of the Officer Commanding-in-Chief, the Command.

(3) The term of office of a member nominated or deemed to have been re-elected under this section shall expire at the time at which it would have expired if he had been elected at the ordinary or casual election, as the case may be.

18. (1) Every person who is by virtue of his office, or who is nominated or elected to be, a member of a Board shall, before taking his seat, make at a meeting of the Board an oath or affirmation of his allegiance to the Crown in the following form, namely :—

" I, A. B., having ^{become}~~been elected~~_{been nominated} a member of this Board, do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King, Emperor of India, his heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

(2) If any such person fails to make the oath or affirmation within such time as the Local Government considers reasonable, the Local Government shall, by notification in the local official Gazette, declare his seat to be vacant.

19. (1) Any nominated or elected member of a Board who wishes to resign his office may forward his resignation in writing through the President of the Board to the Officer Commanding-in-Chief, the Command, who shall forward it for orders to the Local Government.

(2) If the Local Government accepts the resignation, such acceptance shall be communicated to the Board, and thereupon the seat of the member resigning shall become vacant.

President and Vice-President. 20. (1) The Commanding Officer of the cantonment shall be the President of the Board.

(2) There shall be a Vice-President of every Board elected from among the members at a meeting thereof :

Provided that, where the Board includes elected members, the Vice-President shall be elected by those members only from among their number.

Term of office of Vice-President. 21. (1) The term of office of a Vice-President shall be—

- (a) in the case of a person who is not in the service of the Government, three years or the residue of his term of office as a member, whichever is less, or
- (b) in the case of a person in the service of the Government, the residue of the term of his office as a member.

(2) A Vice-President may resign his office by notice in writing to the President and, on the resignation being accepted by the Board, the office shall become vacant.

Duties of President. 22. (1) It shall be the duty of the President of every Board—

- (a) unless prevented by reasonable cause, to convene and preside at all meetings of the Board and to regulate the conduct of business thereat ;

- (b) to exercise supervision and control over the financial and executive administration of the Board ;
- (c) to perform all the duties and exercise all the powers specifically imposed or conferred on the President by or under this Act ; and
- (d) subject to any restrictions, limitations and conditions imposed by this Act, to exercise executive power for the purpose of carrying out the provisions of this Act and to be directly responsible for the fulfilment of the purposes of this Act.

(2) The President may, by order in writing, empower the Vice-President to exercise all or any of the powers and duties referred to in clause (c) of sub-section (1) other than any power, duty or function which he is by resolution of the Board expressly forbidden to delegate.

(3) The exercise or discharge of any powers, duties or functions delegated by the President under this section shall be subject to such restrictions, limitations and conditions, if any, as may be laid down by the President and to the control of, and to revision by, the President.

(4) Every order made under sub-section (2) shall forthwith be communicated to the Board and to the Officer Commanding the District.

Duties of Vice-President.

23. It shall be the duty of the Vice-President of every Board—

- (a) in the absence of the President and unless prevented by reasonable cause, to preside at meetings of the Board and when so presiding to exercise the authority of the President under sub-section (1) of section 22 ;
- (b) during the incapacity or temporary absence of the President or pending his appointment of succession, to perform any other duty and exercise any other power of the President ;
- (c) to exercise any power and perform any duty of the President which may be delegated to him under sub-section (2) of section 22.

Duties of the Executive Officer.

24. The Executive Officer shall perform all the duties imposed upon him by or under this Act, and shall be responsible for the custody of all the records of the Cantonment Authority, and shall arrange for the performance of such duties relative to the proceedings of the Board or of any Committee of the Board or of any Committee of Arbitration constituted under this Act, as those bodies may respectively impose on him, and shall comply with every requisition of the Cantonment Authority on any matter pertaining to the administration of the cantonment.

25. The Executive Officer may, in cases of emergency, direct the execution of any work or the doing of any act which would ordinarily require the sanction of the Cantonment Authority and the immediate execution or doing of which is, in his opinion, necessary for the service or safety of the public, and may direct that the expense of executing such work or doing such act shall be paid from the cantonment fund :

Provided that—

- (a) where there is a Board, he shall not act under this section without the previous sanction of the President or, in his absence, of the Vice-President ;
- (b) he shall not act under this section in contravention of any order of the Cantonment Authority prohibiting the execution of any particular work or the doing of any particular act ; and
- (c) he shall report forthwith the action taken under this section and the reasons therefor to the Cantonment Authority.

Elections.

26. (1) Where a Board is to be constituted in any cantonment, Electoral rolls. otherwise than in accordance with the proviso to sub-section (1) of section 14, the Cantonment Authority shall prepare and publish an electoral roll showing the names of persons qualified to vote at elections to the Board. Such roll shall be prepared, revised and finally published in such manner and on such date in each year as the Local Government may by rule prescribe.

(2) Every person whose name appears in the final electoral roll shall, so long as the roll remains in force, be entitled to vote at an election to the Board and no other person shall be so entitled.

(3) When a cantonment has been divided into wards, or the inhabitants into classes, the electoral roll shall be divided into separate lists for each ward or class, as the case may be.

(4) If a new electoral roll is not published in any year on the date prescribed, the Local Government may direct that the old electoral roll shall continue in operation until the new roll is published.

Qualification of electors. 27. (1) The following persons shall, if not otherwise disqualified, be entitled to be enrolled as electors, namely :—

- (a) every person who in any year has, on or before such date as may be fixed by the Local Government in this behalf by notification in the local official Gazette (hereinafter in this section referred to as the aforesaid date), been assessed directly and on his own account to taxes under this Act (other than octroi, toll or terminal tax) the aggregate value whereof is not less than such amount as the Local Government may by rule prescribe, and who on the aforesaid date is not in arrears in the payment of any such tax ;
- (b) every person who has for a period of not less than twelve months immediately preceding the aforesaid date resided in the cantonment and on the aforesaid date—
 - (i) is the owner or the mortgagee in possession or the lessee of any building or land in the cantonment, of an annual value calculated in such manner and of not less than such amount, as the Local Government may by rule prescribe ; or

(ii) is carrying on any business in the cantonment from which he derives an annual income calculated in such manner, and of not less than such amount, as the Local Government may by rule prescribe ; or

(iii) is a graduate of any University established by law in British India ; or

(iv) is a retired or pensioned officer, whether commissioned or non-commissioned, of His Majesty's forces ;

(c) every person who has, during a period of not less than twelve months immediately preceding the aforesaid date, resided in the cantonment and has during that period been assessed to income-tax.

(2) A person, notwithstanding that he is otherwise qualified, shall not be entitled to be enrolled as an elector if he on the aforesaid date—

(i) is not a British subject, or

(ii) is less than 21 years of age, or

(iii) has been adjudged by a competent Court to be of unsound mind, or

(iv) is an undischarged insolvent, or

(v) has been sentenced by a Criminal Court to imprisonment for a term exceeding six months or to transportation or has been ordered to find security for good behaviour under the Code of Criminal Procedure, 1898, or has been sentenced by a v of 1898. Criminal Court for any offence under Chapter IX-A of the XLV of 1860. Indian Penal Code :

Provided that the Local Government may, by order in writing, remove any disqualification incurred by a person under clause (v).

(3) If any person having been enrolled as an elector in any electoral roll subsequently becomes subject to any of the disqualifications referred to in clauses (i), (iii), (iv) and (v) of sub-section (2), his name shall be removed from the electoral roll unless, in the case referred to in clause (v), the disqualification is removed by the Local Government.

28. (1) Save as hereinafter provided, every person, not being a military officer or soldier, whose name is entered on the electoral roll of a cantonment shall be qualified for election as a member of the Board in that cantonment.

Qualification for
being a member of
the Board.

(2) No person shall be qualified for election or nomination as a member of a Board, if he—

(a) has been dismissed from Government service and is debarred from re-employment therein, or is a dismissed servant of the Cantonment Authority ;

(b) is debarred from practising as a legal practitioner by order of any competent authority ;

(c) holds any place of profit in the gift or at the disposal of the Board, or is a stipendiary Magistrate or police officer, or is the servant or employer of a member of the Board ; or

- (d) is interested in a subsisting contract made with, or in work being done for, the Board except as a shareholder (other than a director) in an incorporated company ; or
- (e) is disqualified under any other provision of this Act :

Provided that—

- (i) any of the disqualifications referred to in clauses (a) and (b) may be removed by an order of the Local Government in this behalf, and
- (ii) a person shall not be deemed to have any interest in such a contract or work as is referred to in clause (d) by reason only of his having a share or interest in—
 - (a) any lease or sale or purchase of immoveable property or any agreement for the same ; or
 - (b) any agreement for the loan of money or any security for the payment of money only, or
 - (c) any newspaper in which any advertisement relating to the affairs of the Board is inserted, or
 - (d) the sale to the Board of any articles in which he regularly trades or the purchase from the Board of any articles, to a value in either case not exceeding Rs. 1,500 in the aggregate in any year during the period of the contract or work.

Interpretation.

29. For the purposes of sections 26, 27 and 28—

- (a) " person " means an individual human being, and
- (b) a person shall be deemed to pay a tax directly if he pays the tax either himself or through a legally appointed agent.

30. Notwithstanding anything hereinbefore contained, the Local Government may make rules conferring on the manager or representative of an undivided family or of any company or firm or other association or body or on any trustee of any land a right to be enrolled as an elector or to be nominated as a candidate at elections to a Board.

31. The Local Government may, either generally or specially for any cantonment or group of cantonments, after previous publication, make rules consistent with this Act to regulate all or any of the following matters, for the purpose of the holding of elections under this Act, namely :—

Power to make
rules regulating
elections.

- (a) the division of a cantonment into wards, or of the inhabitants of a cantonment into classes, or both ;
- (b) the determination of the number of members to be elected by each ward or class of persons ;
- (c) the method by which the annual value of buildings and lands shall be calculated for the purposes of section 27 ;
- (d) the preparation, revision and final publication of electoral rolls ;
- (e) the registration of electors, the nomination of candidates, the time and manner of holding elections and the method by which votes shall be recorded ;

- (f) the authority by which and the manner in which disputes relating to electoral rolls or arising out of elections shall be decided, and the powers and duties of such authority, and the circumstances in which such authority may declare a casual vacancy to have been created or any candidate to have been elected ;
- (g) any other matter relating to elections or election disputes in respect of which the Local Government is empowered to make rules under this Chapter or in respect of which this Act makes no provision or makes insufficient provision and provision is, in the opinion of the Local Government, necessary.

Members.

32. No member of a Board shall vote at a meeting of the Board on any question relating to his own conduct or on any matter, other than a matter affecting generally the inhabitants of the cantonment, which affects his own pecuniary interest or the valuation of any property in respect of which he is directly or indirectly interested, or of any property of or for which he is a manager or agent.

33. Every member of a Board shall be liable for the loss, waste or misapplication of any money or other property belonging to the Board if such loss, waste or misapplication is a direct consequence of his neglect or misconduct while such member ; and a suit for compensation for the same may be instituted against him either by the Board or by the Secretary of State for India in Council.

Removal of members.

34. (1) The Local Government may remove from a Board any member thereof who—

- (a) has absented himself for more than three consecutive months from the meetings of the Board and is unable to explain such absence to the satisfaction of the Board ; or
- (b) is an undischarged insolvent ; or
- (c) is adjudged by a competent Court to be of unsound mind, or is deaf and dumb or a leper ; or
- (d) has been sentenced by a Criminal Court to imprisonment for a term exceeding six months or to transportation, or has been ordered to furnish security for his good behaviour under the Code of Criminal Procedure, 1898, or has been sentenced by a Criminal Court for any offence under Chapter IX-A of the Indian Penal Code ; or
- (e) is interested in a subsisting contract made with, or in work being done for, the Board in such a manner as to be disqualified under section 28 for election or nomination as a member ; or
- (f) has knowingly contravened the provisions of section 32 ; or
- (g) being a legal practitioner, acts or appears on behalf of any other person against the Board in any legal proceeding or against the Secretary of State in Council in any such

V of 1898.
XLV of 1860.

proceeding relating to any matter in which the Board is or has been concerned, or acts or appears on behalf of any person in any criminal proceeding instituted by or on behalf of the Board against such person.

(2) The Local Government may remove from a Board any member who, in the opinion of the Local Government, has so flagrantly abused in any manner his position as a member of the Board as to render his continuance as a member detrimental to the public interests.

(3) No member shall be removed from a Board under this section unless he has been given a reasonable opportunity of showing cause against his removal.

Consequences of removal.

35. (1) A member removed under clause (a) of sub-section (1) of section 34 shall, if otherwise qualified, be eligible for re-election or nomination.

(2) A member removed under clause (b) of sub-section (1) of section 34 shall not be eligible for re-election or nomination until he has obtained his discharge.

(3) A member removed under sub-section (2) of section 34 shall not be eligible for re-election or nomination until the expiry of three years from the date of his removal.

(4) A member removed under any other provision of section 34 shall not be eligible for re-election or nomination until he is declared so eligible by the Local Government by notification in the local official Gazette.

Servants.

36. (1) No person who has directly or indirectly by himself or his partner any share or interest in a contract with, by or on behalf of a Cantonment Authority or in any employment under, by or on behalf of a Cantonment Authority, otherwise than as a servant of the Cantonment Authority shall become or remain a servant of such Cantonment Authority.

Disqualification of person as servant of Cantonment Authority.

(2) A servant of a Cantonment Authority who knowingly acquires or continues to have directly or indirectly by himself or his partner any share or interest in a contract with, by or on behalf of the Cantonment Authority or, in any employment under, by or on behalf of, the Cantonment Authority, otherwise than as a servant of the Cantonment Authority, shall be deemed to have committed an offence under section

XLV of 1860: 168 of the Indian Penal Code.

(3) Nothing in this section shall apply to any share or interest in any contract with, by or on behalf of, or employment under, by or on behalf of, a Cantonment Authority if the same is a share in a company contracting with, or employed by, or on behalf of, the Cantonment Authority or is a share or interest acquired or retained with the permission of the Officer Commanding the District in any lease or sale to, or purchase by, the Cantonment Authority of land or buildings or in any agreement for the same.

Procedure.

37. (1) Every Board shall ordinarily hold at least one meeting in every month on such day as may be fixed, and of which notice shall be given in such manner as may be provided, by regulations made by the Board under this Chapter.

(2) The President may, whenever he thinks fit, and shall, upon a requisition in writing by not less than one-fourth of the members of the Board, convene a special meeting.

(3) Any meeting may be adjourned until the next or any subsequent day, and an adjourned meeting may be further adjourned in like manner.

38. Subject to any regulation made by the Board under this Chapter, any business may be transacted at any meeting :

Provided that no business relating to the imposition, abolition or modification of any tax shall be transacted at a meeting unless notice of the same and of the date fixed therefor has been sent to each member not less than seven days before that date.

39. (1) The quorum necessary for the transaction of business at a meeting of a Board shall be five or one-half of the number of members of the Board actually holding office at the time, whichever is the greater number.

(2) If a quorum is not present, the President shall adjourn the meeting and the business which would have been brought before the original meeting if there had been a quorum present thereat shall be brought before, and may be transacted at, an adjourned meeting, whether there is a quorum present or not.

40. In the absence of both the President and the Vice-President from any meeting, the members present shall elect one from among their own number to preside.

41. (1) Minutes of the proceedings of each meeting shall be recorded in a book and shall be signed by the President before the close of the meeting, and shall, at such times and in such place as may be fixed by the Board, be open to inspection free of charge by any inhabitant of the cantonment.

(2) Copies of the minutes shall, as soon as possible after each meeting, be forwarded for information to the Officer Commanding the district, the Officer Commanding the brigade area, and the District Magistrate.

42. Every meeting of a Board shall be open to the public unless in any case the President, for reasons to be recorded in the minutes, otherwise directs.

43. (1) All questions coming before a meeting shall be decided by the majority of the votes of the members present and voting.

(2) In the case of an equality of votes, the President shall have a second or casting vote.

(3) The dissent of any member from any decision of the Board shall, if the member so requests, be entered in the minutes, together with a short statement of the grounds for such dissent.

Power to make regulations. 44. (1) A Board may make regulations consistent with this Act and with the rules made thereunder to provide for all or any of the following matters, namely :—

- (a) the time and place of its meetings ;
- (b) the manner in which notice of the meeting shall be given ;
- (c) the conduct proceedings at meeting and the adjournment of meetings ;
- (d) the custody of the common seal of the Board and the purposes for which it shall be used ; and
- (e) the appointment of committees for any purpose and the determination of all matters relating to the constitution and procedure of such committees, and the delegation to such committees, subject to any conditions which the Board thinks fit to impose, of any of the powers or duties of the Board under this Act other than a power to make regulations or by-laws.

(2) No regulation made under clause (e) of sub-section (1) shall take effect until it has been approved by the Local Government.

(3) No regulation made under this section shall take effect until it has been published in such manner as the Local Government may direct.

Joint action with other local authority.

45. (1) A Cantonment Authority may—

- (a) join with any other local authority—
 - (i) in appointing a joint committee for any purpose in which they are jointly interested and in appointing a chairman of such committee ;
 - (ii) in delegating to such committee power to frame terms binding on the Cantonment Authority and such other local authority as to the construction and future maintenance of any joint work or to exercise any power which might be exercised by either of the said authorities ; and
 - (iii) in making rules for regulating the proceedings of any such committee relating to the purposes for which it has been appointed ; or
- (b) with the previous sanction of the Local Government, enter into an agreement with any other local authority regarding the levy of any tax or toll whereby the said tax or toll respectively leviable by the authorities so contracting may be levied together instead of separately within the limits of the aggregate area comprising the areas subject to the control of the said authorities.

(2) If any difference of opinion arises between any authorities acting together under this section, the decision thereon of the Local Government or of an officer appointed by the Local Government in this behalf shall be final.

(3) When any agreement such as is referred to in clause (b) of sub-section (1) has been entered into, then—

- (a) where the agreement relates to an octroi or terminal tax or toll, the other local authority with which the Cantonment Authority has made such agreement shall have the same powers to establish octroi limits and octroi stations and places for the collection of the terminal tax and terminal toll within the cantonment, as it has within the area ordinarily subject to its control ;
- (b) such other local authority shall have the same power of collecting such tax or toll in the cantonment, and the provisions of any enactment in force relating to the levy of such tax or toll by such other local authority shall apply in the same manner, as if the cantonment were comprised within the area ordinarily subject to its control ; and
- (c) the total of the collection of such tax and toll made in the cantonment and in the area ordinarily subject to the control of such other local authority and the costs thereby incurred shall be divided between the cantonment fund and the fund subject to the control of such other local authority, in such proportion as may have been determined by the agreement.

Control.

Power of Government to require production of documents.

46. The Governor-General in Council or the Local Government may at any time require a Cantonment Authority—

- (a) to produce any record, correspondence, plan or other document in its possession or under its control ;
- (b) to furnish any return, plan, estimate, statement, account or statistics relating to its proceedings, duties or works ;
- (c) to furnish or obtain and furnish any report.

47. The Officer Commanding the District may depute any person in the service of the Government to inspect or examine any department of the office of, or any service or work undertaken by, or thing belonging to, a Cantonment Authority, and to report thereon, and the Cantonment Authority and its officers and servants shall be bound to afford the person so deputed access at all reasonable times to the premises and property of the Cantonment Authority and to all records, accounts and other documents the inspection of which he may consider necessary to enable him to discharge his duties.

Powers of Officer Commanding the District.

48. The Officer Commanding the District may, by order in writing,—

- (a) call for any book or document in the possession or under the control of the Cantonment Authority ;
- (b) require the Cantonment Authority to furnish such statements, accounts, reports and copies of documents relating to its proceedings, duties or works as he thinks fit.

Power to require
execution of work,
etc.

49. If, on receipt of any information or report obtained under section 47 or section 48, the Officer Commanding the District is of opinion—

- (a) that any duty imposed on a Cantonment Authority by or under this Act has not been performed or has been performed in an imperfect, inefficient or unsuitable manner, or
- (b) that adequate financial provision has not been made for the performance of any such duty ;

he may, with the concurrence of the Officer Commanding-in-Chief, the Command, and of the Local Government, direct the Cantonment Authority, within such period as he thinks fit, to make arrangements to his satisfaction for the proper performance of the duty, or, as the case may be, to make financial provision to his satisfaction for the performance of the duty :

Provided that, unless in the opinion of the Officer Commanding the District, the immediate execution of such order is necessary, he shall, before making any direction under this section, give the Cantonment Authority an opportunity of showing cause why such direction should not be made.

50. If, within the period fixed by a direction made under section 49, any action the taking of which has been directed under that section has not been duly taken, the Officer Commanding the District may make arrangements for the taking of such action, and may direct that all expenses connected therewith shall be defrayed out of the cantonment fund.

Power to provide
for enforcement of
direction under
section 49.

51. (1) If the President dissents from any decision of the Board, which he considers prejudicial to the health, welfare or discipline of the troops in the cantonment, he may, for reasons to be recorded in the minutes, by order in writing, direct the suspension of action thereon for any period not exceeding one month and, if he does so, shall forthwith refer the matter to the Officer Commanding-in-Chief, the Command, through the Officer Commanding the District, who may make such recommendations thereon as he thinks fit.

Power to over-
ride decision of
Board.

(2) If the District Magistrate considers any decision of a Cantonment Authority to be prejudicial to the public health, safety or convenience, he may, after giving notice in writing of his intention to the Cantonment Authority, refer the matter to the Local Government ; and, pending the disposal of the reference to the Local Government, no action shall be taken on the decision.

(3) If any Magistrate who is a member of a Board, being present at a meeting, dissents from any decision which he considers prejudicial to

the public health, safety or convenience, he may, for reasons to be recorded in the minutes and after giving notice in writing of his intention to the President, report the matter to the District Magistrate ; and the President shall, on receipt of such notice, direct the suspension of action on the decision for a period sufficient to allow of a communication being made to the District Magistrate and of his taking proceedings as provided by sub-section (2).

Power of Officer Commanding-in-Chief, the Command, on reference under section 51 or otherwise.

52. (1) The Officer Commanding-in-Chief, the Command, may at any time on a recommendation made to him in this behalf by the Officer Commanding the District—

- (a) direct that any matter or any specific proposal other than one which has been referred to the Local Government under sub-section (2) of section 51 be considered or re-considered by the Cantonment Authority ; or
- (b) direct the suspension, for such period as may be stated in the order, of action on any decision of a Cantonment Authority, other than a decision which has been referred to him under sub-section (1) of section 51, and thereafter cancel the suspension or direct that the decision shall not be carried into effect or that it shall be carried into effect with such modifications as he may specify.

(2) When any decision of a Board has been referred to him under sub-section (1) of section 51, the Officer Commanding-in-Chief, the Command, may, by order in writing,—

- (a) cancel the order given by the President directing the suspension of action ; or
- (b) extend the duration of the order for such period as he thinks fit ; or
- (c) direct that the decision be carried into effect by the Board with such modifications as he may specify.

Powers of Local Government on a reference made under section 51.

53. When any decision of a Cantonment Authority has been referred to the Local Government under sub-section (2) of section 51, the Local Government may, after consulting the Officer Commanding-in-Chief, the Command, by order in writing,—

- (a) direct that no action be taken on the decision ; or
- (b) direct that the decision be carried into effect either without modification or with such modifications as it may specify.

54. (1) If, in the opinion of the Local Government, any Board is not competent to perform or persistently makes default in the performance of the duties imposed on it by or under this Act or otherwise by law, or exceeds or abuses its powers, the Local Government may, with the previous sanction of the Governor General in Council, by an order published, together with the statement of the reasons therefor, in the local official Gazette, declare

Supersession of Board.

the Board to be incompetent or in default or to have exceeded or abused its powers, as the case may be, and supersedes it for such period as may be specified in the order :

Provided that no Board shall be superseded unless a reasonable opportunity has been given to it to show cause against the supersession.

(2) When a Board is superseded by an order under sub-section (1)—

- (a) all members of the Board shall, on such date as may be specified in the order, vacate their offices as such members but without prejudice to their eligibility for election or nomination under clause (c) ;
- (b) during the supersession of the Board, all powers and duties conferred and imposed upon the Board by or under this Act or otherwise by law shall be exercised and performed by the Commanding Officer of the cantonment subject to such reservation, if any, as the Local Government may prescribe in this behalf ; and
- (c) before the expiry of the period of supersession elections shall be held and nominations made for the purpose of reconstituting the Board.

Validity of Proceedings.

Validity of proceedings, etc.

55. (1) No act or proceeding of a Board or of any committee of a Board shall be invalid by reason only of the existence of a vacancy in the Board or committee.

(2) No disqualification or defect in the election, nomination or appointment of a person acting as the President or a member of a Board or of any such committee shall vitiate any act or proceeding of the Board or committee if the majority of the persons present at the time of the act being done or the proceeding being taken were duly qualified members thereof.

(3) Any document or minutes which purport to be the record of the proceedings of a Board or of any committee of a Board shall, if made and signed substantially in the manner prescribed for the making and signing of the record of such proceedings, be presumed to be a correct record of the proceedings of a duly convened meeting held, by a duly constituted Board or committee, as the case may be, whereof all the members were duly qualified.

CHAPTER IV.

SPIRITUOUS LIQUORS AND INTOXICATING DRUGS.

56. If within a cantonment, or within such limits adjoining a cantonment as the Local Government may, by notification in the local official Gazette, define, any person not subject to military or air-force law or any person subject to military or air-force law otherwise than as a military officer or a soldier knowingly barter, sells or supplies, or offers or attempts to barter, sell or supply, any spirituous liquor or intoxicating drug to or for the use of any soldier or follower or soldier's wife

Unauthorised sale of spirituous liquor or intoxicating drug.

or minor child without the written permission of the Commanding Officer of the cantonment or of some person authorised by the Commanding Officer of the cantonment to grant such permission, he shall be punishable with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

Unauthorised possession of spirituous liquor.

57. If within a cantonment, or within any limits defined under section 56,—

- (a) any person subject to military or air-force law otherwise than as military officer or a soldier, or
- (b) the wife or servant of any such person or of a soldier,

has in his or her possession, except on behalf of the Government or for the private use of a military officer, more than one quart of any spirituous liquor, other than fermented malt-liquor, without the written permission of the Commanding Officer of the cantonment or of some person authorised by the Commanding Officer of the cantonment to grant such permission, he or she shall be punishable, in the case of first offence, with fine which may extend to fifty rupees, and, in the case of a subsequent offence, with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees.

Arrest of persons and seizure and confiscation of things for offences against the two last foregoing sections.

58. (1) Any police officer or excise officer may, without an order from a Magistrate and without a warrant, arrest any person whom he finds committing an offence under section 56 or section 57, and may seize and detain any spirituous liquor or intoxicating drug in respect of which such an offence has been committed and any vessels or coverings in which the liquor or drug is contained.

(2) Where a person accused of an offence under section 56 has been previously convicted of an offence under that section, an officer in charge of a police station may, with the written permission of a Magistrate, seize and detain any spirituous liquor or intoxicating drug within the cantonment or within any limits defined under that section which, at the time of the alleged commission of the subsequent offence, belonged to, or was in the possession of, such person.

(3) The Court convicting a person of an offence under section 56 or section 57 may order the confiscation of the whole or any part of anything seized under sub-section (1) or sub-section (2).

(4) Subject to the provisions of Chapter XLIII of the Code of Criminal Procedure, 1898, anything seized under sub-section (1) or sub-section (2) and not confiscated under sub-section (3) shall be restored to the person from whom it was taken.

59. The foregoing provisions of this Chapter shall not apply to the sale or supply of any article in good faith for medicinal purposes by a medical practitioner, chemist or druggist authorised in this behalf by a general or special order of the Commanding Officer of the cantonment.

Saving of articles sold or supplied for medicinal purposes.

CHAPTER V.

TAXATION.

Imposition of Taxation.

60. The Local Government may, by notification in the local official Gazette, impose in any cantonment any tax which, under any enactment in force on the date of the notification, may be imposed in any Municipality within the province.

General power of taxation.

61. (1) When the Local Government proposes to impose any tax under section 60, it shall, by notification in the local official Gazette, and in such other manner as is in its opinion best suited for the purpose, give notice of its intention.

Framing of preliminary proposals.

(2) Every notification issued under sub-section (1) shall specify—

- (a) the tax which it is proposed to impose ;
- (b) the persons or classes of persons to be made liable and the description of the property or other taxable thing or circumstance in respect of which they are to be made liable ; and
- (c) the rate at which the tax is to be levied.

62. Any inhabitant of the cantonment may, within thirty days from the date of the notification under section 61, submit to the Local Government an objection in writing to all or any of the proposals framed therein, and the Local Government shall take any objection so submitted into consideration.

Objections.

63. After the expiry of thirty days from the date of the notification and after considering all objections submitted thereto under section 62, the Local Government may impose the tax either in the original form or, if any such objection has been so submitted, in that form or in such modified form as it thinks fit.

Consideration of objections and imposition of tax.

64. For the purposes of this Chapter, "annual value" means—

Definition of 'annual value.'

- (a) in the case of railway stations, hotels, colleges, schools, hospitals, factories and any other buildings which a Cantonment Authority decides to assess under this clause, one-twentieth of the sum obtained by adding the estimated present cost of erecting the building to the estimated value of the land appertaining thereto, and
- (b) in the case of a building or land not assessed under clause (a), the gross annual rent for which such building (exclusive of furniture or machinery therein) or such land is actually let or, where the building or land is not let or in the opinion of the Cantonment Authority is let for a sum less than its fair letting value, might reasonably be expected to let from year to year :

Provided that, where the annual value of any building is, by reason of exceptional circumstances, in the opinion of the Cantonment Authority, excessive if calculated in the aforesaid manner, the Cantonment Authority may fix the annual value at any less amount which appears to it to be just.

65. (1) Save as otherwise expressly provided in the notification imposing the tax, every tax on the annual value of buildings or lands or of both shall be leviable primarily upon the actual occupier of the property upon which the said tax is assessed, if he is the owner of the buildings or lands or holds them on a building or other lease from the Secretary of State in Council or from the Cantonment Authority or on a building lease from any person.

(2) In any other case, the tax shall be primarily leviable as follows, namely:—

- (a) if the property is let, upon the lessor;
- (b) if the property is sub-let, upon the superior lessor;
- (c) if the property is unlet, upon the person in whom the right to let the same vests.

(3) On failure to recover any sum due on account of such tax from the person primarily liable, there may be recovered from the occupier of any part of the buildings or lands in respect of which the tax is due such portion of the sum due as bears to the whole amount due the same ratio which the rent annually payable by such occupier bears to the aggregate amount of rent so payable in respect of the whole of the said buildings or lands, or to the aggregate amount of the letting value thereof, if any, stated in the authenticated assessment list.

(4) An occupier who makes any payment for which he is not primarily liable under this section, shall, in the absence of any contract to the contrary, be entitled to be reimbursed by the person primarily liable for the payment, and, if so entitled, may deduct the amount so paid from the amount of any rent from time to time becoming due from him to such person.

Assessment List.

66. When a tax on the annual value of buildings or lands or both is imposed, the Cantonment Authority shall cause an assessment list of all buildings or lands in the cantonment, or of both, as the case may be, to be prepared in such form as the Local Government may by rule prescribe.

67. When the assessment list has been prepared, the Cantonment Authority shall give public notice thereof, and of the place where the list or a copy thereof may be inspected, and every person claiming to be the owner, lessee or occupier of any property included in the list, and any authorized agent of such person, shall be at liberty to inspect the list and to make extracts therefrom free of charge.

68. (1) The Cantonment Authority shall, at the same time, give public notice of a date, not less than one month thereafter, when it will proceed to consider the valuations and assessments entered in the assessment list, and,

in all cases in which any property is for the first time assessed or the assessment is increased, it shall also give written notice thereof to the owner and to any lessee or occupier of the property.

(2) Any objection to a valuation or assessment shall be made in writing to the Cantonment Authority before the date fixed in the notice, and shall state in what respect the valuation or assessment is disputed; and all objections so made shall be recorded in a register to be kept for the purpose by the Cantonment Authority.

(3) The objections shall be inquired into and investigated, and the persons making them shall be allowed an opportunity of being heard either in person or by authorized agent, by an Assessment Committee appointed by the Cantonment Authority.

(4) The Assessment Committee shall consist of not less than three persons, and, where there is a Board, it shall not be necessary to appoint to the Assessment Committee any member thereof.

69. (1) When all objections made under section 68 have been disposed of, and the revision of the valuation and assessment has been completed, the assessment list shall be authenticated by the signature of the members of the Assessment Committee who shall, at the same time, certify that they have considered all objections duly made and have amended the list so far as is required by their decisions on such objections.

(2) The assessment list so authenticated shall be deposited in the office of the Cantonment Authority, and shall there be open, free of charge, during office hours to all owners, lessees and occupiers of property comprised therein or the authorized agents of such persons, and a public notice that it is so open shall forthwith be published.

70. Subject to such alterations as may thereafter be made in the assessment list under the provisions of this Chapter and to the result of any appeal made thereunder, the entries in the assessment list authenticated and deposited as provided in section 69 shall be accepted as conclusive evidence—

(i) for the purpose of assessing any tax imposed under this Act, of the annual value or other valuation of all buildings and lands to which such entries respectively refer, and

(ii) for the purposes of any tax imposed on buildings or lands, of the amount of each such tax leviable thereon during the year to which such list relates.

71. (1) The Cantonment Authority may, at any time, amend the assessment list by inserting the name of any person whose name ought to have been or ought to be inserted, or by inserting any property which ought to have been or ought to be inserted, or by altering the assessment on any property which has been erroneously valued or assessed through fraud, accident or mistake, whether on the part of the Cantonment Authority or of the Assessment Committee or of the assessee, or, in the case of a tax payable by an occupier, by a change in the tenancy, after giving notice to any person affected by the amendment of a time, not less than one month from the date of service, at which the amendment is to be made:

Provided that no person shall by reason of any such amendment become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the financial year in which the amendment is made.

(2) Any person interested in any such amendment may tender an objection to the Cantonment Authority in writing before the time fixed in the notice, and shall be allowed an opportunity of being heard in support of the same in person or by authorized agent.

72. The Cantonment Authority shall prepare a new assessment list at least once in every three years, and for this purpose the provisions of sections 66 to 71 shall apply in like manner as they apply for the purpose of the preparation of an assessment list for the first time.

73. (1) Whenever the title of any person primarily liable for the payment of a tax on the annual value of any building or land to or over such building or land is transferred, the person whose title is transferred and the person to whom the same is transferred shall, within three months after the execution of the instrument of transfer or after its registration, if it is registered, or after the transfer is effected, if no instrument is executed, give notice of such transfer to the Executive Officer.

(2) In the event of the death of any person primarily liable as aforesaid, the person on whom the title of the deceased devolves shall give notice of such devolution to the Executive Officer within six months from the death of the deceased.

(3) The notice to be given under this section shall be in such form as the Executive Officer may direct, and the transferee or other person on whom the title devolves shall, if so required, be bound to produce before the Executive Officer any documents evidencing the transfer or devolution.

(4) Every person who makes a transfer as aforesaid without giving such notice to the Executive Officer shall continue liable for the payment of all taxes assessed on the property transferred until he gives notice or until the transfer has been recorded in the registers of the Cantonment Authority, but nothing in this section shall be held to affect the liability of the transferee for the payment of the said tax.

74. (1) If any building is erected or re-erected within the meaning of section 179, the owner shall give notice thereof to the Executive Officer within thirty days from the date of its completion or occupation, whichever is earlier.

(2) Any person failing to give the notice required by sub-section (1) shall be punishable with fine which may extend to fifty rupees or ten times the amount of the tax payable on the said building, as erected or re-erected, as the case may be, in respect of a period of three months, whichever is greater.

Remission and Refund.

75. If any building is wholly or partly demolished or destroyed or otherwise deprived of value, the Cantonment Authority, may, on the application of the owner, remit or refund such portion of the tax payable thereon as it thinks fit.

Demolition, etc., of buildings.

76. In a cantonment other than a hill cantonment, when any building or land has remained vacant and unproductive of rent for ninety or more consecutive days during any year, the Cantonment Authority shall remit or refund, as the case may be, such portion of the tax payable thereon in respect of that year as may be proportionate to the number of days during which the said building or land has remained vacant and unproductive of rent.

Remission of tax.

77. For the purpose of obtaining a patril remission or refund of tax, the owner of a building composed or separate tenements may request the Cantonment Authority, at the time of the assessment of the building, to enter in the assessment list, in addition to the annual value of the whole building, a note recording in detail the annual value of each separate tenement. When any tenement, the annual value of which has been thus separately recorded, has remained vacant and unproductive of rent for ninety or more consecutive days during any year, such portion of the tax payable in respect of that year on the whole building shall be remitted or refunded as would have been remitted or refunded if the tenement had been separately assessed :

Power to require entry in assessment list of details of building.

Provided that no such remission shall be made unless notice in writing of the circumstances in which it is claimed has been given to the Cantonment Authority, and no remission or refund shall take effect in respect of any period commencing more than fifteen days before the delivery of such notice.

78. (1) For the purposes of sections 76 and 77 no building, tenement or land shall be deemed vacant if maintained as a pleasure resort or town or country house, or be deemed unproductive of rent if let to a tenant who has a continuing right of occupation thereof, whether he is in actual occupation or not.

What buildings, etc., are to be deemed vacant.

(2) The burden of proving all facts entitling any person to claim relief under section 75, or section 76, or section 77, shall be upon him.

79. (1) The owner of any building, tenement or land in respect of which a remission or refund of tax has been given under section 76 or section 77 shall give notice of the re-occupation of such building or land within fifteen days of such re-occupation.

Notice to be given of every occupation of vacant building or house.

(2) Any owner failing to give the notice required by sub-section (1) shall be punishable with fine which shall not be less than twice the amount of the tax payable on such building, tenement or land in respect of the period during which it has been re-occupied and which may extend to fifty rupees, or to ten times the amount of the said tax, whichever sum is greater.

Charge on Immoveable property.

Tax on buildings
and land to be a
charge thereon.

80. A tax assessed on the annual value of any building or land shall, subject to the prior payment of the land-revenue, if any, due to the Government thereon, be a first charge upon the building or land.

Octroi, Terminal Tax and Toll.

81. Every person bringing or receiving any goods, vehicles or animals within the limits of any cantonment in which octroi or terminal tax or toll is leviable, shall, when so required by an officer duly authorised by the Cantonment Authority in this behalf, so far as may be necessary for ascertaining the amount of tax chargeable—

(a) permit that officer to inspect, examine or weigh such goods, vehicles or animals; and

(b) communicate to that officer any information, and exhibit to him any bill, invoice or document of a like nature, which such person may possess relating to such goods, vehicles or animals.

82. (1) Any person who takes or attempts to take past any octroi station or any other place appointed within a cantonment for the collection of octroi, terminal tax or toll any goods, vehicles or animals, on account of which octroi, terminal tax or toll is leviable and thereby evades, or attempts to evade, the payment of such octroi, terminal tax or toll, and any person who abets any such evasion or attempt at evasion, shall be punishable with fine which may extend either to ten times the value of such octroi, terminal tax or toll, or to fifty rupees, whichever is greater, and which shall not be less than twice the value of such octroi, terminal tax or toll, as the case may be.

(2) In case of non-payment of any octroi or terminal tax or toll on demand, the officer empowered to collect the same may seize any goods, vehicles or animals on which the octroi, terminal tax or toll is chargeable or any part or number thereof which is of sufficient value to satisfy the demand.

(3) The Cantonment Authority, after the lapse of five days from the seizure, and after the issue of a notice in writing to the person in whose possession the goods, vehicles or animals were at the time of seizure, fixing the time and place of sale, may cause the property so seized, or so much thereof as may be necessary, to be sold by auction to satisfy the demand and any expenses occasioned by the seizure, custody and sale thereof, unless the demand and expenses are in the meantime paid :

Provided that the Executive Officer may, in any case, order that any article of a perishable nature which cannot be kept for five days without serious risk of damage, or which cannot be kept save at a cost which, together with the amount of octroi, terminal tax or toll is likely to exceed its value, shall be sold after the lapse of such shorter time as he may, having regard to the nature of the article, think proper.

(4) If at any time before the sale has begun, the person whose property has been seized tenders to the Executive Officer the amount of all expenses incurred and of the octroi, terminal tax or toll, the Executive Officer shall release the property seized.

(5) The surplus, if any, of the sale-proceeds shall be credited to the cantonment fund, and shall, on application made to the Cantonment Authority within one year after the sale, be paid to the person in whose possession the property was at the time of seizure, and, if no such application is made, shall be the property of the Cantonment Authority.

83. It shall be lawful for the Cantonment Authority, with the previous sanction of the Officer Commanding the District, to lease the collection of any octroi, terminal tax or toll for any period not exceeding one year ; and the lessee and all persons employed by him in the management and collection of the octroi, terminal tax or toll shall, in respect thereof,—

- (a) be bound by any orders made by the Cantonment Authority for their guidance ;
- (b) have such powers exercisable by officers or servants of the Cantonment Authority under this Act as the Cantonment Authority may confer upon them ; and
- (c) be entitled to the same remedies and be subject to the same responsibilities as if they were employed by the Cantonment Authority for the management and collection of the octroi, terminal tax or toll, as the case may be :

Provided that no article distrained may be sold except under the orders of the Cantonment Authority.

Appeals.

84. (1) An appeal against the assessment or levy of, or against the refusal to refund, any tax under this Act shall lie to the District Magistrate or to such other officer as may be empowered by the Local Government in this behalf :

Appeals against assessment.
Provided that, where there is a board and the person to whom the appeal would ordinarily lie is, or was when the tax was imposed, a member of the Board, the appeal shall lie to the Commissioner of the Division, or, in a province where there are no Commissioners, to the District Judge.

(2) If, on the hearing of an appeal under this section, any question as to the liability to, or the principle of assessment of, a tax arises or which the officer hearing the appeal entertains reasonable doubt, he may either of his own motion or on the application of the appellant, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer the statement with his own opinion on the point for the decision of the High Court.

(3) On a reference being made under sub-section (2), the subsequent proceedings in the case shall be, as nearly as may be, in conformity with the rules relating to references to the High Court contained in Order XLVI of the First Schedule to the Code of Civil Procedure, 1908

Costs of appeal. 85. In every appeal the costs shall be in the discretion of the officer hearing the appeal.

Recovery of costs from Cantonment Authority. 86. If the Cantonment Authority fails to pay any costs awarded to an appellant within ten days after the date of the order for payment thereof the officer awarding the costs may order the person having the custody of the balance of the cantonment fund to pay the amount.

Conditions of right to appeal. 87. No appeal shall be heard or determined under this Chapter unless—

- (a) the appeal is in the case of a tax assessed on the annual value of buildings or lands or both, brought within thirty days next after the date of the authentication of the assessment list under section 69 (exclusive of the time requisite for obtaining a copy of the relevant entries therein), or, as the case may be, within thirty days of the date on which an amendment is finally made under section 71, and, in the case of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given, within thirty days next after the date of the presentation of the first bill in respect thereof ;

Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the Court before whom the appeal is preferred that he had sufficient cause for not preferring it within that period ;

- (b) the amount, if any, in dispute in the appeal has been deposited by the appellant in the office of the Cantonment Authority.

Finality of appellate orders. 88. The order of an appellate authority confirming, setting aside or modifying an order in respect of any valuation or assessment or liability to assessment or taxation shall be final :

Provided that it shall be lawful for the appellate authority, upon application or on its own motion, to review any order passed by it in appeal if application in this behalf is made within three months from the date of the original order.

Payment and Recovery of Taxes.

Time and manner of payment of taxes. 89. Save as otherwise expressly provided under this Act, any tax imposed under the provisions of this Act shall be payable on such dates and in such instalments, if any, as the Cantonment Authority may, by public notice, direct.

Presentation of bill. 90. (1) When any tax has become due, the Executive Officer shall cause to be presented to the person liable for the payment thereof a bill for the amount due.

(2) Every such bill shall specify the particulars of the tax and the period for which the charge is made.

91. (1) If the amount of the tax for which any bill has been presented is not paid to the Cantonment Authority within thirty days from the presentation thereof, the Executive Officer may cause to be served upon the person liable for the payment of the same a notice of demand in the form set forth in Schedule I.

(2) For every notice of demand which the Executive Officer causes to be served on any person under this section, a fee of such amount not exceeding one rupee, as shall in each case be fixed by the Executive Officer, shall be payable by the said person and shall be included in the costs of recovery.

92. (1) If the person liable for the payment of any tax does not, within thirty days from the service of the notice of demand, pay the amount due, or show sufficient cause for non-payment of the same to the satisfaction of the Executive Officer, such sum, with all costs of recovery, may be recovered under a warrant, issued in the form set forth in Schedule II, by distress and sale of the moveable property of the defaulter :

Provided that the Executive Officer shall not recover any sum the liability for which has been remitted on appeal under this Chapter.

(2) Every warrant issued under this section shall be signed by the Executive Officer.

93. (1) It shall be lawful for any servant of the Cantonment Authority to whom a warrant issued under section 92 is addressed to distrain, wherever it may be found, any moveable property of the person therein named as defaulter, subject to the following conditions, exceptions and exemptions, namely :—

(a) the following property shall not be distrained :—

(i) the necessary wearing apparel and bedding of the defaulter, his wife and children,

(ii) tools of artisans,

(iii) books of account, or

(iv) when the defaulter is an agriculturist his implements of husbandry, seed-grain, and such cattle as may be necessary to enable the defaulter to earn his livelihood ;

(b) the distress shall not be excessive, that is to say, the property distrained shall be as nearly as possible equal in value to the amount recoverable under the warrant, and if any property has been distrained which, in the opinion of the Executive Officer, should not have been distrained, it shall forthwith be returned.

(2) The person charged with the execution of a warrant of distress shall forthwith make an inventory of the property which he seizes under such warrant, and shall, at the same time, give a written notice in the form set forth in Schedule III to the person in possession thereof at the time of seizure that the said property will be sold as therein mentioned.

94. (1) When the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is, when added to the amount to be recovered, likely to exceed its value, the Executive Officer shall give notice to the person in whose possession the property was at the time of seizure that it will be sold at once, and shall sell it accordingly by public auction unless the amount mentioned in the warrant is forthwith paid.

(2) If the warrant is not in the meantime suspended by the Executive Officer, or discharged, the property seized shall, after the expiry of the period named in the notice served under sub-section (2) of section 93, be sold by public auction by order of the Executive Officer.

(3) The surplus of the sale-proceeds, if any, shall forthwith be credited to the cantonment fund, and notice of such credit shall be given at the same time to the person from whose possession the property was taken, and, if the same is claimed by written application to the Cantonment Authority within one year from the date of the notice, a refund thereof shall be made to such person. Any surplus not claimed within one year as aforesaid shall be the property of the Cantonment Authority.

(4) For every distraint made under this Chapter a fee of such amount, not exceeding one rupee, as shall in each case be fixed by the Executive Officer shall be charged, and the said fee shall be included in the costs of recovery.

95. (1) If the Executive Officer has reason to believe that any person from whom any sum is due on account of any tax is about to remove from the cantonment, he may direct the immediate payment by such person of the sum so due or about to become due, and cause a bill for the same to be served on such person.

(2) If, on the service of such bill, such person does not forthwith pay the sum so due or about to become due, the amount shall be leviable by distress and sale in the manner hereinbefore provided in this Chapter, except that it shall not be necessary to serve upon the defaulter any notice of demand and the warrant for distress and sale may be issued and executed without any delay.

96. Instead of proceeding against a defaulter by distress and sale as hereinbefore provided in this Chapter, or after a defaulter has been so proceeded against unsuccessfully or with only partial success, any sum due or the balance of any sum due, as the case may be, from such defaulter on account of a tax may be recovered from him by a suit in any Court of competent jurisdiction.

Power to prohibit or exempt from taxation.

Special Provisions relating to Taxation.

97. Every Cantonment Authority shall be deemed to be a Municipal Committee for the purposes of the Municipal Taxation Act, 1881.

XX of 1881.

98. A Cantonment Authority may make special provision for the cleansing of any factory, hotel, club or group of buildings or lands used for any one purpose and under one management, and may fix a special rate and the dates and other conditions for periodical payment thereof, which shall be determined by a written agreement with the person liable for the payment of the conservancy or scavenging tax in respect of such factory, hotel, club or group of buildings or lands :

Power to make special provision for conservancy in certain cases.

Provided that, in fixing the amount, proper regard shall be had to the probable cost to the Cantonment Authority of the services to be rendered.

99. (1) When, in pursuance of section 98, a Cantonment Authority has fixed a special rate for the cleansing of any factory, hotel, club or group of buildings or lands, such premises shall be exempted from the payment of any conservancy or scavenging tax imposed in the cantonment.

(2) The following buildings and lands shall be exempt from any tax on property, namely :—

- (a) places set apart for public worship and either actually so used or used for no other purpose ;
- (b) buildings used for educational purposes and public libraries, play-grounds and dharmasalas which are open to the public and from which no income is derived ;
- (c) hospitals and dispensaries maintained wholly by charitable contributions ;
- (d) burning and burial grounds not being the property of Government or a Cantonment Authority which are controlled under the provisions of this Act ;
- (e) buildings or lands vested in a Cantonment Authority ; and
- (f) any buildings or lands, used or acquired for the public service or for any public purpose which are the property of, or in the occupation of, the Government.

100. A Cantonment Authority may exempt, for a period not exceeding one year at a time from the payment of any tax or any portion of a tax imposed under this Act, any person who is, in its opinion, by reason of poverty unable to pay the same.

Exemption of poor persons.

101. (1) A Cantonment Authority may, with the previous sanction of the Officer Commanding the District, allow any person to compound for any tax.

(2) Every sum due by reason of the composition of a tax under sub-section (1) shall be recoverable as if it were a tax.

102. A Cantonment Authority may write off any sum due on account of any tax or of the costs of recovering any tax if such sum is, in its opinion, irrecoverable.

Irrecoverable debts.

103. (1) The Executive Officer may, by written notice call upon any inhabitant of the cantonment to furnish such information as may be necessary for the purpose of ascertaining—

Obligation to disclose liability.

- (a) whether such inhabitant is liable to pay any tax imposed under this Act ;
- (b) at what amount he should be assessed ; or
- (c) the annual value of the building or land which he occupies and the name and address of the owner or lessee thereof.

(2) If any person, when called upon under sub-section (1) to furnish information, neglects to furnish it or furnishes information which is not true to the best of his knowledge or belief, he shall be punishable with fine which may extend to one hundred rupees.

104. No assessment and no charge or demand on account of any tax or fee shall be impeached or effected by reason only of any mistake in the name of any person liable to pay such tax or fee, or in the description of any property or thing or any mistake in the amount of the assessment, charge or demand, if the directions contained in this Act and the rules and by-laws made thereunder have in substance and effect been complied with, but any person who sustains any special damage by reason of any such mistake shall be entitled to recover compensation for the same by suit in a Court of competent jurisdiction.

Immaterial error not to effect liability.

105. No distress levied under this Chapter shall be deemed unlawful nor shall any person making the same be deemed a trespasser, on account only of any defect of form in the notice of demand, warrant of distress or other proceeding relating thereto ; nor shall any such person be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him. but any person who sustains any special damage by reason of any such irregularity shall be entitled to recover compensation for the same by suit in a Court of competent jurisdiction.

Distraint not to be invalid by reason of immaterial defect.

CHAPTER VI.

CANTONMENT FUND AND PROPERTY.

Cantonment Fund.

106. There shall be formed for every cantonment a cantonment fund, and there shall be placed to the credit thereof the following sums, namely :—

Cantonment fund.

- (a) the balance, if any, of the cantonment fund formed for the cantonment under the Cantonments Act, 1910; XV of 1910
- (b) all sums received by or on behalf of the Cantonment Authority; and
- (c) subject to any deductions made under section 545 of the Code of Criminal Procedure, 1898, or under any other law for the time being in force.

time being in force, or under any order of the Local Government, all fines recovered from persons convicted of offences committed within the cantonment—

- V of 1861. (i) under this Act or any rule or by-law made thereunder, or
- (ii) under section 34 of the Police Act, 1861, or under any corresponding enactment for the time being in force, or
- XLV of 1860. (iii) under Chapter XIII or Chapter XIV of the Indian Penal Code, or
- (iv) under section 156 of the Army Act, or
- 44 & 45 Vict.,
c. 58. (v) under the provisions of any enactment wherein or whereunder provision is made for a fine being credited to the cantonment fund, or
- (vi) under any other enactment for the time being in force in respect of which the Governor General in Council may, by general or special order, direct that fines realized thereunder shall be credited to the cantonment fund.

107. (1) Where in or near a cantonment there is a Government treasury or sub-treasury, or a branch of the Imperial Bank of India, the cantonment fund shall be kept in such treasury, sub-treasury or bank, as the case may be.

(2) Where there is no such treasury, sub-treasury or bank, the cantonment fund may be deposited with any bank to which the Government treasury business has been entrusted, and, in the absence of such a bank, with any banker or person acting as a banker who has given such security for the safe custody of the fund and the payment on demand of the funds so deposited as the Local Government may in each case direct.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), a Cantonment Authority may, with the previous sanction of the Local Government, place in fixed deposit with the Imperial Bank of India any surplus funds in its hands which may not be required for immediate use, or may invest the same in securities of the Government of India or a Local Government or in such other securities as the Local Government may approve in this behalf, and may vary such investments for others of a like nature, and may dispose of such securities as may be necessary.

(4) The income resulting from any fixed deposit or from any such security as is referred to in sub-section (3) or from the proceeds of the sale of any such security shall be credited to the cantonment fund.

Property.

108. Subject to any special reservation made by the Governor General in Council or the Local Government, all property of the nature hereinafter in this section specified which has been acquired or provided or is maintained by a Cantonment Authority shall vest in and belong to that Cantonment Authority, and shall be under its direction, management and control, that is to say,—

- (a) all markets, slaughter-houses, manure and nightsoil depots, and buildings of every description ;

- (b) all water-works for the supply, storage or distribution of water for public purposes, and all bridges, buildings, engines, materials, and things connected therewith or appertaining thereto ;
- (c) all sewers, drains, culverts and water-courses, and all works, materials and things appertaining thereto ;
- (d) all dust, dirt, dung, ashes, refuse, animal matter, filth and rubbish of every kind, and dead bodies of animals collected by the Cantonment Authority from the streets, houses, privies, sewers, cesspools or elsewhere, or deposited in places appointed by the Cantonment Authority for such purpose ;
- (e) all lamps and lamp-posts and apparatus connected therewith or appertaining thereto ;
- (f) all land or other property transferred to the Cantonment Authority by His Majesty, or by gift, purchase or otherwise for local public purposes ; and
- (g) all streets and the pavements, stones and other materials thereof, and also all trees, erections, materials, implements, and things existing on or appertaining to streets.

109. The cantonment fund and all property vested in a Cantonment

Authority shall be applied for the purposes, whether express or implied, for which, by or under this Act or any other law for the time being in force, powers are conferred or duties or obligations are imposed upon the Cantonment Authority :

Provided that the Cantonment Authority shall not incur any expenditure for acquiring or renting land beyond the limits of the cantonment or for constructing any work beyond such limits except—

- (a) with the sanction of the Local Government, and
- (b) on such terms and conditions as the Local Government may impose :

Provided, further, that priority shall be given in the order hereinafter set forth to the following liabilities and obligations of a Cantonment Authority, that is to say,—

- (a) to the liabilities and obligations arising from a trust legally imposed upon or accepted by the Cantonment Authority ;
- (b) to the repayment of, and the payment of interest on, any loan incurred under the provisions of the Local Authorities Loans Act, 1914 ;
- (c) to the payment of establishment charges ;
- (d) to the payment of such expenses on account of pauper lunatics sent from the cantonment to public lunatic asylums and mental hospitals as the Local Government directs the Cantonment Authority to pay ; and
- (e) to the payment of any sum the payment of which is expressly required by the provisions of this Act or any rule or by-law made thereunder.

IX of 1914.

I of 1894.

110 When there is any hindrance to the permanent or temporary acquisition upon payment of any land required by a Cantonment Authority for the purposes of this Act, the Local Government may, at the request of the Cantonment Authority, proceed to acquire it under the provisions of the Land Acquisition, Act, 1894, and, on payment by the Cantonment Authority of the compensation awarded under that Act and of the charges incurred by the Government in connection with the proceedings, the land shall vest in the Cantonment Authority.

Acquisition of
immovable pro-
perty.

Power to make
rules regarding can-
tonment fund and
property.

111. The Governor-General in Council may make rules consistent with this Act to provide for all or any of the following matters, namely:—

- (a) the conditions on which property may be acquired by Cantonment Authorities or on which property vested in a Cantonment Authority may be transferred by sale, mortgage, lease, exchange or otherwise: and
- (b) any other matter relating to the cantonment fund or cantonment property in respect of which no provision or insufficient provision is made by or under this Act and provision is, in the opinion of the Governor-General in Council, necessary.

CHAPTER VII.

CONTRACTS.

112. Subject to the provisions of this Chapter every Cantonment Authority shall be competent to enter into and perform any contract necessary for the purposes of this Act.

Contracts by whom
to be executed.

Sanction.

113. (1) Every contract—

- (a) for which budget provision does not exist, or
- (b) which involves a value or amount exceeding one hundred rupees,

shall require the sanction of the Cantonment Authority.

(2) Every contract other than a contract such as is referred to in sub-section (1) shall be sanctioned by the Cantonment Authority or by the Executive Officer on behalf of the Cantonment Authority.

114. (1) Every contract made by or on behalf of a Cantonment Authority, the value or amount of which exceeds fifty rupees, shall be in writing, and every such contract shall, where there is a Board, be signed by two members, of whom the President or the Vice-President shall be one, and be countersigned by the Executive Officer and be sealed with the common seal of the Board, or, where there is no Board, be signed by the Commanding Officer of the cantonment and be sealed with the official seal of the Cantonment Authority:

Execution of
contracts.

Provided that, where there is a Board, the Executive Officer may in a case of urgency, with the previous sanction of the President of the Board, execute on behalf of the Board any contract the value or amount of which does not exceed two hundred rupees.

(2) Where an Executive Officer executes a contract on behalf of a Board under sub-section (1), he shall submit a report of his action and of the reasons therefor to the Board at its next meeting.

Contracts improperly executed not to be binding on a Cantonment Authority.

115. If any contract is executed by or on behalf of a Cantonment Authority otherwise than in conformity with the provisions of this Chapter, it shall not be binding on the Cantonment Authority.

CHAPTER VIII.

DUTIES AND DISCRETIONARY FUNCTIONS OF CANTONMENT AUTHORITIES.

Duties of Cantonment Authority.

116. It shall be the duty of every Cantonment Authority, so far as the funds at its disposal permit, to make reasonable provision within the cantonment for—

- (a) lighting streets and other public places ;
- (b) watering streets and other public places ;
- (c) cleansing streets, public places and drains, abating nuisances and removing noxious vegetation ;
- (d) regulating offensive, dangerous or obnoxious trades, callings and practices ;
- (e) removing, on the ground of public safety, health or convenience, undesirable obstructions and projections in streets and other public places ;
- (f) securing or removing dangerous buildings and places ;
- (g) acquiring, maintaining, changing and regulating places for the disposal of the dead ;
- (h) constructing, altering and maintaining streets, culverts, markets, slaughter-houses, latrines, privies, urinals, drains, drainage works and sewerage works ;
- (i) planting and maintaining trees on road-sides and other public places ;
- (j) providing or arranging for a sufficient supply of pure and wholesome water, where such supply does not exist, guarding from pollution water used for human consumption, and preventing polluted water from being so used ;
- (k) registering births and deaths ;
- (l) establishing and maintaining a system of public vaccination ;
- (m) establishing and maintaining or supporting, public hospitals and dispensaries, and providing public medical relief ;
- (n) establishing and maintaining primary schools ;
- (o) rendering assistance in extinguishing fires, and protecting life and property when fires occur ;
- (p) maintaining and developing the value of property vested in, or entrusted to the management of, the Cantonment Authority ; and
- (q) fulfilling any other obligation imposed upon it by or under this Act or any other law for the time being in force.

Discretionary
functions of Canton-
ment Authority.

117. A Cantonment Authority may, within the cantonment, make provision for—

- (a) laying out in areas, whether previously built upon or not, new streets and acquiring land for that purpose and for the construction of buildings and compounds of buildings, to abut on such streets ;
- (b) constructing, establishing or maintaining public parks, gardens, offices, dairies, bathing or washing places, drinking fountains, tanks, wells and other works of public utility ;
- (c) reclaiming unhealthy localities ;
- (d) furthering educational objects by measures other than the establishment and maintenance of primary schools ;
- (e) taking a census and granting rewards for information which may tend to secure the correct registration of vital statistics ;
- (f) making a survey ;
- (g) giving relief on the occurrence of local epidemics by the establishment or maintenance of relief works or otherwise ,
- (h) securing or assisting to secure suitable places for the carrying on of any offensive, dangerous or obnoxious trade, calling or occupation ;
- (i) establishing and maintaining a farm or other place for the disposal of sewage ;
- (j) constructing, subsidising or guaranteeing tramways or other means of locomotion, and electric lighting or electric power works ,
- (k) adopting any measure, other than a measure specified in section 116 or in the foregoing provisions of this section likely to promote the safety, health or convenience of the inhabitants of the cantonment ; or
- (l) the doing of anything on which expenditure is declared by the Local Government or by the Cantonment Authority, with the sanction of the Local Government, to be an appropriate charge on the cantonment fund.

CHAPTER IX.

PUBLIC SAFETY AND SUPPRESSION OF NUISANCES.

General Nuisances.

Penalty for causing
nuisances.

118. (1) Whoever—

- (a) in any street or other public place within a cantonment,—
 - (i) is drunk and disorderly or drunk and incapable of taking care of himself ; or
 - (ii) uses any threatening, abusive or insulting words, or behaves in a threatening, or insulting manner, with intent to provoke a breach of the peace, or whereby a breach of the peace is likely to be occasioned ; or
 - (iii) eases himself, or wilfully or indecently exposes his person ; or

- (iv) loiters, or begs importunately, for alms ; or
- (v) exposes or exhibits, with the object of exciting charity, any deformity or disease or any offensive sore or wound ; or
- (vi) carries meat exposed to public view ; or
- (vii) is found gaming ; or
- (viii) pickets animals, or collects carts ; or
- (ix) being engaged in the removal of night-soil or other offensive matter or rubbish, wilfully or negligently permits any portion thereof to spill or fall, or neglects to sweep away or otherwise effectually to remove any portion thereof which may spill or fall in such street or place ; or
- (x) without proper authority affixes upon any building, monument, post, wall, fence, tree or other thing, any bill, notice or other document ; or
- (xi) without proper authority defaces or writes upon or otherwise marks any building, monument, post, wall, fence, tree or other thing ; or
- (xii) without proper authority removes, destroys, defaces or otherwise obliterates any notice or other document put up or exhibited under this Act ; or
- (xiii) without proper authority displaces, damages, or makes any alteration in, or otherwise interferes with, the pavement, gutter, stormwater-drain, flags or other materials of any such street, or any lamp, bracket, direction-post, hydrant or water-pipe maintained by the Cantonment Authority in any such street or public place, or extinguishes a public light ; or
- (xiv) carries any corpse not decently covered or without taking due precautions to prevent risk of infection or injury to the public health or annoyance to passers by or to persons dwelling in the neighbourhood ; or
- (xv) carries night-soil or other offensive matter or rubbish at any hour prohibited by the Cantonment Authority by public notice, or in any pattern of cart or receptacle which has not been approved for the purpose by the Cantonment Authority, or fails to close such cart or receptacle when in use ; or
- (b) carries night-soil or other offensive matter or rubbish along any route in contravention of any prohibition made in this behalf by the Cantonment Authority by public notice ; or
- (c) deposits, or causes or permits to be deposited, earth or materials of any description, or any offensive matter or rubbish in any place not intended for the purpose in any street or other public place or waste or unoccupied land under the management of the Cantonment Authority ; or

- (d) having charge of a corpse fails to bury, burn or otherwise lawfully dispose of the same within twenty-four hours after death ; or
- (e) makes any grave or buries or burns any corpse in any place not set apart for such purpose ; or
- (f) keeps or uses, or knowingly permits to be kept or used, any place as a common gaming house, or assists in conducting the business of any common gaming house ; or
- (g) at any time or place at which the same has been prohibited by the Cantonment Authority by public or special notice, beats a drum or tom-tom, or blows a horn or trumpet, or beats any utensil, or sounds any brass or other instrument, or place any music ; or
- (h) disturbs the public peace or order by singing, screaming or shouting ; or
- (i) lets loose any animal so as to cause, or negligently allows any animal to cause, injury, danger, alarm or annoyance to any person ; or
- (j) being the occupier of any building or land in or upon which an animal dies, neglects within three hours of the death of the animal, or, if the death occurs at night, within three hours after sunrise, either—
 - (i) to report the occurrence to the Executive Officer or to an officer, if any, appointed by him in this behalf with a view to securing the removal and disposal of the carcase by the public conservancy establishment, or
 - (ii) to remove and dispose of the carcase in accordance with any general directions given by the Cantonment Authority by public notice or any special directions given by the Executive Officer on receipt of such report as aforesaid ; or
- (k) save with the written permission of the Cantonment Authority and in such manner as it may authorize, stores or uses night-soil, manure, rubbish or any other substance emitting an offensive smell ; or
- (l) uses or permits to be used as a latrine any place not intended for that purpose ;

shall be punishable with fine which may extend to fifty rupees.

(2) Whoever does not take reasonable means to prevent any child under the age of twelve years being in his charge from easing himself in any street or other public place within the cantonment shall be punishable with fine which may extend to twenty-five rupees.

(3) The owner or keeper of any animal found picketed or straying without a keeper in a street or other public place in a cantonment shall be punishable with fine which may extend to twenty rupees.

(4) Any animal found picketed as aforesaid may be removed by any officer or servant of the Cantonment Authority or by any police officer to a pound as if the animal had been found straying.

Dogs.

Registration and control of dogs. 119. (1) A Cantonment Authority may make by-laws to provide for registration of all dogs kept within the cantonment.

(2) Such by-laws shall—

- (a) require the registration, by the Officer Commanding each military unit, of all dogs kept in the lines occupied by that unit ;
- (b) require that every registered dog shall wear a collar to which shall be attached a metal token to be issued by the registration authority, and fix the fee payable for the issue thereof ;
- (c) require that any dog which has not been registered or which is not wearing such token shall, if found in any public place, be detained at a place set apart for the purpose ; and
- (d) fix the fee which shall be charged for such detention and provide that any such dog shall be liable to be destroyed or otherwise disposed of unless it is claimed and the fee in respect thereof is paid within one week ;

and may provide for such other matters as the Cantonment Authority thinks fit.

(3) A Cantonment Authority may—

- (a) cause to be destroyed, or to be confined for such period as that Authority may direct, any dog or other animal which is, or is reasonably suspected to be, suffering from rabies, or which has been bitten by any dog or other animal suffering or suspected to be suffering from rabies ;
- (b) by public notice direct that, after such date as may be specified in the notice, dogs which are without collars or without marks distinguishing them as private property and are found straying on the streets or beyond the enclosures of the houses of their owners, if any, may be destroyed, and cause them to be destroyed accordingly.

(4) No damages shall be payable in respect of any dog or other animal destroyed or otherwise disposed of under this section.

(5) Whoever, being the owner or person in charge of any dog, neglects to restrain it so that it shall not be at large in any street without being muzzled and without being secured by a chain lead in any case in which —

- (a) he knows that the dog is likely to annoy or intimidate any person, or
- (b) the Cantonment Authority has, by public notice during the prevalence of rabies, directed that dogs shall not be at large without muzzles and chain leads,

shall be punishable with fine which may extend to one hundred rupees.

(6) Whoever in a cantonment—

- (a) allows any ferocious dog which belongs to him or is in his charge to be at large without being muzzled, or

- (b) sets on or urges any dog or other animal to attack, worry or intimidate any person, or
- (c) knowing or having reason to believe that any dog or animal belonging to him or in his charge has been bitten by an animal suffering or reasonably suspected to be suffering from rabies, neglects to give immediate information of the fact to the Executive Officer or gives information which is false,

shall be punishable with fine which may extend to two hundred rupees.

Traffic.

120. Whoever in driving, leading or propelling a vehicle along a street fails, except in a case of actual necessity,—

- (a) to keep to the left when passing a vehicle coming from the opposite direction, or
- (b) to keep to the right when passing a vehicle going in the same direction as himself,

shall be punishable with fine which may extend to fifty rupees.

Prevention of Fire, etc.

121. (1) A Cantonment Authority may, by public notice, direct that within such limits in the cantonment as may be specified in the notice, the roofs, and external walls of huts or other buildings shall not, without the permission in writing of the Cantonment Authority, be made or renewed of grass, mats, leaves or other inflammable materials, and may, by notice in writing, require any person who has disobeyed any such direction as aforesaid to remove or alter the roofs or walls so made or renewed.

(2) A Cantonment Authority may, by notice in writing, require the owner of any building in the cantonment which has an external roof or wall made of any such material as aforesaid to remove such roof or wall within such time as may be specified in the notice, notwithstanding that a public notice under sub-section (1) has not been issued or that such roof or wall was made with the consent of the Cantonment Authority or before the issue of such public notice :

Provided that, in the case of any such roof or wall in existence before the issue of such a public notice or made with the consent of the Cantonment Authority, that authority shall make compensation, not exceeding the original cost of constructing the roof or wall, for any damage caused by the removal.

122. A Cantonment Authority may, by public notice, prohibit in any case where such prohibition appears to it to be necessary for the prevention of danger to life or property, the stacking or collecting of wood, dry grass, straw or other inflammable materials, or the placing of mats or thatched huts or the lighting of fires in any place in the cantonment, or within any limits therein, which may be specified in the notice.

123. No person shall set a naked light on or near any building in any street or other public place in a cantonment in such manner as to cause danger of fire :

Care of naked lights. Provided that nothing in this section shall be deemed to prohibit the use, subject to the permission in writing of the Cantonment Authority, of lights for purposes of illumination on the occasion of a festival or public or private entertainment.

124. (1) Notwithstanding anything contained in the Cinematograph Act, 1918, no exhibition of pictures or other optical effects by means of a cinematograph or other like apparatus for the purpose of which inflammable films are used, and no public dramatic performance or pantomime, shall be given in any cantonment elsewhere than in premises for which a license has been granted by the Cantonment Authority under this section.

Regulation of cinematographs and dramatic performances. (2) If the owner of a cinematograph or other apparatus uses the apparatus or allows it to be used, or if any person takes any part in any public dramatic performance or pantomime, in contravention of the provisions of this section, or if the occupier of any premises allows them to be used in contravention of the provisions of this section or of any condition of any license granted under this section, he shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing offence, with an additional fine which may extend to fifty rupees for each day after the first during which the offence continues.

(3) Nothing in this section shall be deemed to prohibit the giving of any exhibition or any dramatic performance or pantomime in any theatre or institute which is the property of Government where the exhibition, performance or pantomime is held with the permission and under the control of the Military authorities.

125. Whoever in a cantonment discharges any fire-arm or lets off fireworks or fire-balloons, or engages in any game in such manner as to cause or to be likely to cause danger to persons passing by or dwelling or working in the neighbourhood or risk of injury to property shall be liable to fine which may extend to fifty rupees.

Discharging fire-works, fire-arms, etc. **126.** Where in a cantonment any building, or wall, or any thing affixed thereto, or any well, tank, reservoir, pool, depression, or excavation, or any bank or tree, is, in the opinion of the Cantonment Authority, for want of sufficient repairs, protection or enclosure, dangerous to persons passing by or dwelling or working in the neighbourhood, the Cantonment Authority may, by notice in writing, require the owner thereof to repair, protect or enclose the same in such manner as it thinks necessary ; and, if the danger is, in the opinion of the Cantonment Authority, imminent, it shall forthwith take such steps as it thinks necessary to avert the same.

127. A Cantonment Authority may, by notice in writing, require the owner or part owner, or person claiming to be the owner or part owner, of any building or land in the cantonment, or the lessee or the person claiming to be the lessee of any such land, which, by reason of disuse or disputed ownership or other cause, has remained unoccupied and has become the resort of idle and disorderly persons or of persons who have no ostensible means of subsistence or cannot give a satisfactory account of themselves, or is used for gaming or immoral purposes, or otherwise occasions or is likely to occasion a nuisance, to secure and enclose the same within such time as may be specified in the notice.

Enclosure of waste land used for improper purposes.

CHAPTER X.

SANITATION AND THE PREVENTION AND TREATMENT OF DISEASE.

Sanitary Authorities.

128. The following officers shall, for the purposes of sanitation, have control over, and be responsible for maintaining in a sanitary condition, those parts of a cantonment, respectively, which are specified in the case of each, that is to say :—

Responsibility for sanitation.

- (a) the Commanding Officer of the cantonment—all buildings and lands which are occupied or used for military purposes ;
- (b) the Officer Commanding the air forces in the cantonment—all buildings and lands which are occupied or used for air-force purposes ;
- (c) the head of any civil department or railway administration occupying as such any part of the cantonment—all buildings and lands in his charge as head of that department or administration.

129. (1) The Health Officer shall exercise a general sanitary supervision over the whole cantonment, and shall submit monthly to the Cantonment Authority a report as to the sanitary condition of the cantonment, together with such recommendations in connection therewith as he thinks fit.

General duties of Health Officer.

(2) The Assistant Health Officer shall perform such duties in connection with the sanitation of the cantonment as are, subject to the control of the Cantonment Authority, allotted to him by the Health Officer.

Conservancy and Sanitation.

130. All public latrines and urinals provided or maintained by a Cantonment Authority shall be so constructed as to provide separate compartments for each sex and not to be a nuisance, and shall be provided with all necessary conservancy establishments, and shall regularly be cleansed and kept in proper order.

Public latrines, urinals and conservancy establishments.

131. (1) On the application or with the consent of the occupier of any building or land, or, where the occupier of any building or land fails to make arrangements to the satisfaction of the Cantonment Authority for the matters referred to in this section, without such consent, and after giving notice in writing to the occupier, a Cantonment Authority may undertake the house scavenging of any building or land in the cantonment for such period as it thinks fit on such terms as it may prescribe in this behalf.

(2) Where the Cantonment Authority has undertaken the duties referred to in this section, all matter removed in the performance of such duties shall be the property of that Authority.

(3) For the purposes of this section, "house scavenging" means the removal of filth or rubbish or other offensive matter from a privy, latrine, urinal, drain, cesspool, or other common receptacle for such matter.

132. (1) Every Cantonment Authority shall provide or appoint, in proper and convenient situations, public receptacles, depots or places for the temporary deposit or disposal of household rubbish, offensive matter, carcases of dead animals and sewage.

(2) The Cantonment Authority may, by public notice, issue directions as to the time at which, the manner in which, and the conditions subject to which, any matter referred to in the sub-section (1) may be removed along a street or may be deposited or otherwise disposed of.

(3) All matter deposited in receptacles, depots or places provided or appointed under this section shall be the property of the Cantonment Authority.

133. The Executive Officer of any cantonment may, by notice in writing,—

- (a) require any person having the control whether as owner, lessee or occupier of any land or building in the cantonment—
 - (i) to close any cesspool appertaining to the land or building which is, in the opinion of the Executive Officer, a nuisance, or
 - (ii) to keep in a clean condition, in such manner as may be prescribed by the notice, any receptacle for filth or sewage accumulating on the land or in the building, or
 - (iii) to prevent the water of any private latrine, urinal, sink or bath-room, or any other offensive matter, from soaking, draining or flowing, or being put, from the land or building upon any street or other public place, or into any water-course or into any drain not intended for the purpose, or
 - (iv) to collect and deposit for removal by the conservancy establishment of the Cantonment Authority, within such time and in such receptacle or place, situate at not more than one hundred feet from the nearest boundary of the premises, as may be specified in the notice, any offensive matter or rubbish which such person has allowed to accumulate or remain under, in or on such building or land; or

- (b) require any person to desist from making or altering any drain leading into a public drain ; or
- (c) require any person having the control of a drain in the cantonment to cleanse, purify, repair or alter the same, or otherwise put in good order within such time as may be specified in the notice.

134. (1) Where any well, tank, cistern, reservoir, receptacle, or other place in the cantonment where water is stored or accumulates, whether within any private enclosure or not, is in such a condition as to create a nuisance or, in the opinion of the Health Officer, or the Assistant Health Officer, is or is likely to be a breeding place for mosquitoes, the Cantonment Authority may, by notice in writing, require the owner, lessee or occupier thereof within such period as may be specified in the notice, to fill up or cover the well, cistern, reservoir or receptacle, or to fill up the tank, or to drain off or remove the water, as the case may be.

(2) The Cantonment Authority may, if it thinks fit, with the previous sanction of the Officer Commanding the District, meet the whole or any portion of the expenses incurred in complying with a requisition under sub-section (1).

135. A Cantonment Authority may, by notice in writing, require the owner or lessee of any building or land in the cantonment to provide, in such manner as may be specified in the notice, any latrine, urinal, cesspool, dustbin or other receptacle, for filth, sewage, or rubbish, or any additional latrine, urinal, cesspool or other receptacle as aforesaid, which should, in its opinion, be provided for the building or land.

136. Every person employing, whether on behalf of the Government or otherwise, more than ten workmen or labourers and every person managing or having control of a market, school, theatre or other place of public resort, in a cantonment shall give notice of the fact to the Cantonment Authority, and shall provide such latrines and urinals, and shall employ such number of sweepers, as the Cantonment Authority thinks fit, and shall cause the latrines and urinals to be kept clean and in proper order :

Provided that nothing in this section shall apply in the case of a factory to which the Indian Factories Act, 1911, applies.

137. A Cantonment Authority may, by notice in writing,—

- (a) require the owner or other person having the control of any private latrine or urinal in the cantonment not to put the same to public use ; or
- (b) where any plan for the construction of private latrines or urinals has been approved by the Cantonment Authority, and copies thereof may be obtained free of charge on application,—
- (i) require any person repairing or constructing any private latrine or urinal not to allow the same to be used until it

- has been inspected by or under the direction of the Health Officer and approved by him as conforming with such plan, or
- (ii) require any person having control of any private latrine or urinal to re-build or alter the same in accordance with such plan; or
 - (c) require the owner or other person having the control of any such private latrine or urinal which, in the opinion of the Cantonment Authority, constitutes a nuisance, to remove the latrine or urinal; or
 - (d) require any person having the control whether as owner, lessee or occupier of any land or building in the cantonment—
 - (i) to have any latrines provided for the same shut out by a sufficient roof and wall or fence from the view of persons passing by or dwelling in the neighbourhood, or
 - (ii) to cleanse in such manner as the Cantonment Authority may specify in the notice any latrine or urinal belonging to the land or building; or
 - (e) require any person being the owner and having the control of any drain in the cantonment to provide, within ten days from the service of the notice, such covering as may be specified in the notice.

138. (1) Where it appears to a Cantonment Authority that any block of buildings in the cantonment is in an unhealthy condition by reason of the manner in which the buildings are crowded together, or of the narrowness or closeness of the street, or of the want of proper drainage or ventilation, or of the impracticability of cleansing the buildings or other similar cause, it may cause the block to be inspected by a committee consisting of—

- (a) the Health Officer,
- (b) the Civil Surgeon of the district or, if his services are not available, some other medical officer of the Government,
- (c) the Executive Engineer or a person deputed by the Executive Engineer in this behalf, and
- (d) where there is a board, two non-official members thereof.

(2) The committee shall make a report in writing to the Cantonment Authority regarding the sanitary condition of the block, and, if it considers that the condition thereof is likely to cause risk of disease to the inhabitants of the building or of the neighbourhood or otherwise to endanger the public health, it shall clearly indicate on a plan verified by the Executive Engineer or the person deputed by him to serve on the committee, the buildings which should in its opinion wholly or in part be removed in order to abate the unhealthy condition of the block.

(3) If, upon receipt of such report, the Cantonment Authority is of opinion that all or any buildings indicated should be removed, it may, by notice in writing, require the owners thereof to remove them:

Provided that the Cantonment Authority shall make compensation to the owners for any buildings so removed which may have been erected under proper authority:

Provided, further, that the Cantonment Authority may, if it considers it equitable in the circumstances so to do, pay to the owners such sum as it thinks fit as compensation for any buildings so removed which have not been erected under proper authority.

(4) For the purposes of this section "buildings" includes enclosure walls and fences appertaining to buildings.

139. (1) Where it appears to a Cantonment Authority that any building or part of a building in the cantonment which is used as a dwelling house is so overcrowded as to endanger the health of the inmates thereof, it may, after such inquiry as it thinks fit, by notice in writing require the owner or occupier of the building or part thereof, as the case may be, within such time not being less than one month as may be specified in the notice, to abate the overcrowding of the same by reducing the number of lodgers, tenants, or other inmates to such number as may be specified in the notice.

(2) Any person who fails, without reasonable cause, to comply with a requisition made upon him under sub-section (1) shall be punishable with fine which may extend to fifty rupees, and, in the case of a continuing offence, to an additional fine which may extend to five rupees for every day after the first during which the failure has continued.

140. (1) Where any building in a cantonment is so ill-constructed or dilapidated as to be, in the opinion of the Cantonment Authority, in an insanitary state, the Cantonment Authority may, by notice in writing, require the owner, within such time as may be specified in the notice, to execute such repairs or to make such alterations as it thinks necessary for the purpose of removing such defects.

(2) A copy of every notice issued under sub-section (1) shall be conspicuously posted on the building to which it relates.

(3) A notice issued under sub-section (1) shall be deemed to have been complied with if the owner of the building to which it relates has, instead of executing the repairs or making the alterations directed by the notice, removed the building.

141. (1) The Executive Officer may, by notice in writing, require the owner, lessee or occupier of any building or land in the cantonment, which appears to him to be in a filthy or insanitary state, within twenty-four hours to cleanse the same or otherwise put it in a proper state, in such manner as may be specified in the notice.

(2) If, within three months from the date of the service of a notice under sub-section (1), any building or land in respect of which the notice was issued is again in a filthy or insanitary state, the owner, lessee or occupier, as the case may be, shall be punishable with fine which may extend to two hundred rupees.

142. If a Cantonment Authority is satisfied that any building or part of a building in the cantonment which is intended for or used as a dwelling place is unfit for human habitation, it may cause a notice to be posted on some

conspicuous part of the building prohibiting the owner or occupier thereof from using the building or room for human habitation, or allowing it to be so used, until it has been rendered fit for such use to the satisfaction of the Cantonment Authority.

143. A Cantonment Authority may, by notice in writing, require the owner, lessee, or occupier of any land in the cantonment to clear away and remove any thick or noxious vegetation or undergrowth which appears to it to be injurious to health or offensive to persons residing in the neighbourhood.

Removal of noxious vegetation.

144. Where, in the opinion of a Cantonment Authority, the cultivation in the cantonment of any description of crop or the use therein of any kind of manure or the irrigation or any land therein in any specified manner is likely to be injurious to the health of persons dwelling in the neighbourhood, the Cantonment Authority may, by public notice, prohibit such cultivation, use or irrigation after such date as may be specified in the notice, or may, by a like notice, direct that it shall be carried out subject to such conditions as the Cantonment Authority thinks fit :

Agriculture and irrigation.

Provided that if, when a notice is issued under this section, any land to which it relates has been lawfully prepared for cultivation or any crop is sown therein or is standing thereon, the Cantonment Authority shall, if it directs that the notice is to take effect on a date earlier than that by which the crop would ordinarily be sown or reaped, as the case may be, make compensation to all persons interested in the land or crop for the loss, if any, incurred by them respectively by reason of compliance with the notice.

Burial and Burning Grounds.

145. A Cantonment Authority may, by notice in writing, require the owner or person in charge of any burial or burning ground in the cantonment to supply such information as may be specified in the notice concerning the condition, management or position of such ground.

Power to call for information regarding burial and burning grounds.

146. (1) No place in a cantonment which has not been used as a burial or burning ground before the commencement of this Act shall be so used without the permission in writing of the Cantonment Authority.

(2) Such permission may be granted subject to any conditions which the Cantonment Authority thinks fit to impose for the purpose of preventing annoyance to, or danger to the health of, persons residing in the neighbourhood.

147. (1) Where a Cantonment Authority, after making or causing to be made local inquiry, is of opinion that any burial or burning ground in the cantonment has become offensive to, or dangerous to the health of, persons living in the neighbourhood, it may, with the previous sanction of the Local Government, by notice in writing, require the owner or person in charge of such ground to close the same from such date as may be specified in the notice.

Permission for use of new burial or burning ground.

Power to require closing of burial or burning ground.

(2) Where the Local Government sanctions the issue of any notice under sub-section (1), it shall declare the conditions on which the burial or burning ground may be re-opened, and a copy of such declaration shall be annexed to the notice.

(3) Where the Local Government sanctions the issue of any such notice, it shall require a new burial or burning ground to be provided at the expense of the cantonment fund, or, if the community concerned is willing to provide a new burial or burning ground, the Local Government shall require a grant to be made from the cantonment fund towards the cost of the same.

(4) No corpse shall be buried or burnt in any burial or burning ground in respect of which a notice issued under this section is for the time being in force.

Exemption from
operation of sec-
tions 145 to 147.

148. The provisions of sections 145, 146 and 147 shall not apply in the case of any burial ground which is for the time being managed by or on behalf of the Government.

Removal
of corpses.

149. A Cantonment Authority may, by public notice, prescribe routes in the cantonment by which alone corpses may be removed to burial or burning grounds.

Prevention of Infectious or Contagious Diseases.

150. Whoever, being in charge of, or in attendance, whether as a medical practitioner or otherwise, upon any person in a cantonment whom he knows or has reason to believe to be suffering from a contagious or infectious disease, or being the owner, lessee or occupier of any building in a cantonment in which he knows that any such person is so suffering, shall if he fails to give information, or if he gives false information, to the Cantonment Authority respecting the existence of such disease, be punishable with fine which may extend to one hundred rupees :

Provided that no person shall be punishable under this section for failure to give information if he had reasonable cause to believe that the information had already been duly given :

Provided, further, that this section shall not apply in the case of venereal disease where the person suffering therefrom is under specific and adequate medical treatment and is, by reason of his habits and conditions of life and residence unlikely to spread the disease.

151. (1) In the event of a cantonment being visited or threatened by an outbreak of any infectious or contagious disease among the inhabitants thereof or of any epidemic disease among any animals therein, the Officer Commanding the District, if he thinks that the provisions of this Act or of any law for the time being in force in the cantonment are insufficient for the purpose, may, with the previous sanction of the Local Government,—

Special measures
in case of outbreak
of infectious or epi-
demic diseases.

(a) take such special measures, and

- (b) by public notice, make such temporary regulations to be observed by the public or by any class or section of the public, as he thinks necessary to prevent the outbreak or the spread of the disease :

Provided that, where in the opinion of the Officer Commanding the District immediate measures are necessary, he may take action without such sanction as aforesaid and, if he does so, shall forthwith report such action to the Local Government.

(2) Whoever commits a breach of any temporary regulation made under sub-section (1) shall be deemed to have committed an offence under section 188 of the Indian Penal Code.

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152. Where it is certified to the Executive Officer by a medical practitioner that the outbreak or spread of any infectious or contagious disease in the cantonment is, in the opinion of such medical practitioner, attributable to the milk supplied by any dairyman, the Executive Officer may, by notice in writing, require the dairyman, within such time as may be specified in the notice, to furnish him with a full and complete list of the names and addresses of all his customers within the cantonment, or to give him such information as will enable him to trace the persons to whom the dairyman has sold milk.

• Power to require names of dairyman's customers.

153. Where it is certified to the Executive Officer by the Health Officer that it is desirable, with a view to prevent the spread of any infectious or contagious disease in the cantonment, that the Health Officer should be furnished with a list of the customers of any washerman, the Executive Officer, may by notice in writing, require the washerman, within a time to be specified in the notice, to furnish the Health Officer with a full and complete list of the names and addresses of all owners within the cantonment of clothes and other articles which the washerman washes or has washed during the six weeks immediately preceding the date of notice.

Power to require names of a washerman's customers.

154. Where, after inspection, the Health Officer is of opinion that any infectious or contagious disease is caused or is likely to arise in the cantonment from the consumption of the milk supplied from a dairy or from the washing of clothes or other articles in any place, or from any process employed by a washerman, he shall report the matter to the Executive Officer.

Report after inspection of dairy or washerman's place of business.

Action on report submitted by Health Officer.

155. Upon receipt of a report submitted by the Health Officer under section 154, the Executive Officer may, by notice in writing,—

- (a) prohibit the supply of milk from the dairy until the notice has been withdrawn ; or
- (b) prohibit the washerman from washing clothes or other articles in any such place or by any such process as aforesaid until the notice has been withdrawn or unless he uses such place in such manner, or washes by such process, as the Executive Officer may direct in the notice.

156. The Health Officer may take possession of any milk, clothes or other articles which or have recently been in the possession of any dairyman on whom a notice has been served under section 152, or of any clothes or other articles which are or have recently been in the possession of any washerman, on whom a notice has been served under section 153, and may subject the same or cause the same to be subjected to such chemical or other process as he may think necessary; and the Cantonment Authority shall pay from the cantonment fund all the costs of the process and shall also pay to the owner of the milk, clothes or their articles such sum as compensation for any loss occasioned by such process as may appear to it to be reasonable.

Contamination of public conveyance.

157. Whoever in a cantonment—

- (a) uses a public conveyance while suffering from an infectious or contagious disease, or
- (b) uses a public conveyance for the carriage of a person who is suffering from any such disease, or
- (c) uses a public conveyance for the carriage of the corpse of a person who has died from any such disease,

shall be bound to take proper precautions against the communication of the disease to other persons using or who may thereafter use the conveyance and to notify such use to the owner, driver or person in charge of the conveyance, and further to report without delay to the Executive Officer the number of the conveyance and the name of the person so notified.

158. (1) Where any person suffering from, or the corpse of any person who has died from, an infectious or contagious disease has been carried in a public conveyance which ordinarily plies in a cantonment, the driver thereof shall forthwith report the fact to the Executive Officer who shall forthwith cause the conveyance to be disinfected if that has not already been done.

(2) No such conveyance shall be brought again into use until the Executive Officer has granted a certificate stating that it can be used without causing risk of infection.

159. Whoever fails to make to the Executive Officer any report which he is required to make by section 157 or section 158, shall be punishable with fine which may extend to one hundred rupees.

160. Notwithstanding anything contained in any law for the time being in force, no owner, driver or person in charge of a public conveyance shall be bound to convey or to allow to be conveyed in such conveyance in or in the vicinity of a cantonment any person suffering from an infectious or contagious disease or the corpse of any person who has died from such disease unless and until such person pays or tenders a sum sufficient to cover any loss and expense which would ordinarily be incurred in disinfecting the conveyance.

161. Where a Cantonment Authority is, upon the advice of the Health Officer, of opinion that the cleansing and disinfection of any building or part of a building in the cantonment or of any articles in any such building or part which are likely to retain infection, or the renewal of the flooring of any such building or part of such building, would tend to prevent or check the spread of any infectious or contagious disease, he may, by notice in writing, require the owner or occupier to cleanse and disinfect the said building, part or articles, as the case may be, or to renew the said flooring, within such time as may be specified in the notice :

Provided that where, in the opinion of the Cantonment Authority, the owner or occupier is from poverty or any other cause unable effectually to carry out any such requisition, the Cantonment Authority may, at the expense of the cantonment fund, cleanse and disinfect the building, part or articles, or, as the case may be, renew the flooring.

162. (1) Where the destruction of any hut or shed in a cantonment is, in the opinion of the Cantonment Authority, necessary to prevent the spread of any infectious or contagious disease the Cantonment Authority may, by notice in writing, require the owner to destroy the hut or shed and the materials thereof within such time as may be specified in the notice.

(2) Where the President of a Board or, where there is no Board, the Commanding Officer of the cantonment, is satisfied that the destruction of any hut or shed in the cantonment is immediately necessary for the purpose of preventing the spread of any infectious or contagious disease, he may order the owner or occupier of the hut or shed to destroy the same forthwith, or may himself cause it to be destroyed after giving not less than two hours' notice to the owner or occupier thereof.

(3) The Cantonment Authority shall pay compensation to the owner of any hut or shed destroyed under this section.

163. The Cantonment Authority shall provide free of charge temporary shelter or house accommodation for the members of any family in which an infectious or contagious disease has appeared who have been compelled to leave their dwelling by reason of any proceedings taken under section 161 or section 162, and who desire such shelter or accommodation as aforesaid to be provided for them.

164. (1) Where in a cantonment any building or part of a building is intended to be let in which any person has, within the six weeks immediately preceding, been suffering from an infectious or contagious disease, the person letting the building or part shall before doing so disinfect the same in such manner as the Cantonment Authority may, by public or special notice, direct, together with all articles therein liable to retain infection.

(2) For the purposes of this section, the keeper of an hotel, lodging house or sarai shall be deemed to let to any person who is admitted as a guest therein that part of the building in which such person is permitted to reside.

165. No person shall, without previous disinfection of the same, give, lend, sell, transmit or otherwise dispose of to another person any article or thing which he knows or has reason to believe has been exposed to contamination by any infectious or contagious disease and is likely to be used in, or taken into, a cantonment.

Disposal of infected article without disinfection.

166. (1) Every Cantonment Authority shall—

- (a) provide proper places with necessary attendants and apparatus for the disinfection of conveyances, clothing, bedding or other articles which have been exposed to infection;
- (b) cause conveyances, clothing or other articles brought for disinfection to be disinfected either free of charge or on payment of such charges as it may fix.

(2) A Cantonment Authority may notify places at which articles of clothing, bedding, conveyances or other articles which have been exposed to infection shall be washed, and, if it does so, no person shall wash any such thing at any place not so notified without having previously disinfected such thing.

(3) The President of a Board or, where there is no Board, the Commanding Officer of the cantonment, may direct the destruction of any clothing, bedding or other article in the cantonment likely to retain infection, and may give such compensation as he thinks fit for any article so destroyed.

Making or selling of food, etc., or washing clothes by infected person.

167. Whoever, while suffering from, or in circumstances in which he is likely to spread, any infectious or contagious disease,—

- (a) makes, carries or offers for sale in a cantonment or takes any part in the business of making, carrying or offering for sale therein any article of food or drink or any medicine or drug for human consumption, or any article of clothing or bedding for personal use or wear, or
- (b) takes any part in the business of the washing or carrying of clothes,

shall be punishable with fine which may extend to one hundred rupees.

168. When a cantonment is visited or threatened by an outbreak of any infectious or contagious disease, the Cantonment Authority may, by public notice, restrict in such manner or prohibit for such period, as may be specified in the notice, the sale or preparation of any article of food or drink for human consumption specified in the notice or the sale of any flesh of any description of animals so specified.

Power to restrict or prohibit sale of food or drink.

169. (1) If a Cantonment Authority is of opinion that the water in any well, tank or other place is likely, if used for drinking, to engender, or cause the spread of, any disease, it may,—

Control over
wells, tanks, etc.

- (a) by public notice, prohibit the removal or use of such water for drinking ;
- (b) by notice in writing, require the owner or person having control of such well, tank or place to take such steps as may be directed by the notice to prevent the public from having access to or using such water ; or
- (c) take such other steps as it may consider expedient to prevent the outbreak or spread of any such disease.

(2) In the event of a cantonment or any part of a cantonment or threatened by an outbreak of any infectious or contagious disease, the Health Officer or any person authorized by him in this behalf may at any time, inspect and disinfect any well, tank or other place from which water is, or is likely to be, taken for the purposes of drinking, and may further take such steps as he thinks fit to ensure the purity of the water or to prevent the use of the same for drinking purposes.

170. Where any person has died in a cantonment from any infectious or contagious disease, the Executive Officer may, by notice in writing,—

Disposal of infectious
corpse.

- (a) require any person having charge of the corpse to convey the same to a mortuary, thereafter to be disposed of in accordance with law ; or
- (b) prohibit the removal of the corpse from the place where death occurred except for the purpose of being buried or burned or of being conveyed to a mortuary.

Hospitals and Dispensaries.

Maintenance or
aiding of hospitals
or dispensaries.

171. (1) A Cantonment Authority may—

- (a) provide and maintain either within or without the cantonment as many hospitals and dispensaries as it thinks fit ; or
- (b) make, upon such terms as it thinks fit to impose, a grant-in-aid to any hospital or dispensary, whether within or without the cantonment, not maintained by it.

(2) Every hospital or dispensary maintained or aided under subsection (1) shall have attached to it a ward or wards for the treatment of persons suffering from infectious or contagious diseases.

(3) A medical officer, appointed in such manner as the Local Government may direct, shall be in charge of every hospital or dispensary maintained or aided under this section.

172. (1) Every hospital or dispensary maintained or aided under section 171 shall be maintained in accordance with any general or special orders of the Governor-General in Council or the Local Government for the conduct

Medical supplies,
appliances, etc.

of hospitals and dispensaries or in accordance with the said orders modified in such manner as the Governor-General in Council or the Local Government, as the case may be, thinks fit.

(2) The Cantonment Authority shall cause every such hospital or dispensary to be provided with all requisite drugs, instruments, apparatus, furniture and appliances and with sufficient cots, bedding and clothing for in-patients.

173. At every hospital or dispensary maintained or aided under section 171, the sick-poor of the cantonment, and other inhabitants of the cantonment suffering from infectious or contagious diseases, and, with the sanction of the Cantonment Authority, any other sick persons, may receive medical treatment free of cost, and, if treated as in-patients, shall be either dieted gratuitously or, if the medical officer in charge so directs, shall be granted subsistence allowance on such scale as the Cantonment Authority may fix :

Provided that the subsistence allowance shall not be less than the lowest allowance for the time being fixed for the subsistence of judgment-debtors by the Local Government under section 57 of the Code of Civil Procedure, 1908.

V of 1908.

174. Any sick person who is ineligible to receive medical treatment free of cost in any hospital or dispensary under section 173 may be admitted to treatment therein upon such terms as the Cantonment Authority thinks fit.

175. (1) If the Health Officer or the medical officer in charge of a hospital or dispensary maintained or aided under section 171 has reason to believe that any person living in the cantonment is suffering from an infectious or contagious disease, he may, by notice in writing, call upon such person to attend for examination at any such hospital or dispensary at such time as may be specified in the notice and not to quit it without the permission of the medical officer in charge ; and, on the arrival of such person at the hospital or dispensary, the medical officer in charge thereof may examine him for the purpose of satisfying himself whether or not such person is suffering from an infectious or contagious disease :

Provided that, if, having regard to the nature of the disease or the condition of the person suffering therefrom, or the general environment and circumstances of such person, the Health Officer or medical officer, as the case may be, considers that the attendance of such person at a hospital or dispensary is likely to prove unnecessary or inexpedient, he shall examine such person at such person's own residence.

(2) If any person, on examination under sub-section (1), is found to be suffering from an infectious or contagious disease, the Health Officer or medical officer, as the case may be, may cause him to be detained in hospital until he is free from the infection or contagion :

Provided that, if having regard to the nature of the disease, or the condition of the person suffering therefrom, or the general environment and circumstances of such person, he considers that the detention of

such person at a hospital or dispensary is unnecessary or inexpedient, he shall discharge such person and take such measures or give such directions in the matter as he thinks necessary.

176. (1) If the Health Officer or the medical officer in charge of a hospital or dispensary maintained or aided under section 171 reports in writing to the Commanding Officer of the cantonment that any person having received a notice under section 175 has refused or omitted to attend at the hospital or dispensary, specified in the notice, or that such person, having attended the hospital or dispensary, has quitted it without the permission of such medical officer, or that any person has failed to comply with any direction given to him under section 175, the Commanding Officer of the cantonment may, by order in writing, direct such person to remove from the cantonment within twenty-four hours and not to re-enter it without his permission in writing.

(2) No person who has under sub-section (1) been ordered to remove from and not to re-enter a cantonment shall enter any other cantonment in British India without the written permission of the Commanding Officer of that cantonment.

Control of Traffic for Hygienic Purposes.

177. (1) A Cantonment Authority may provide or prescribe suitable routes for the use of persons passing through the cantonment—

(a) on their way to or from fairs or places of pilgrimage or other places of public resort; or

(b) during times when an infectious or contagious disease is prevalent;

and may, by public notice, require such persons as aforesaid to use such routes and no others.

(2) All routes provided or prescribed under sub-section (1) shall be clearly and sufficiently indicated by the Cantonment Authority.

Special conditions regarding Essential Services.

178. (1) Whoever, being a sweeper employed by a Cantonment Authority, in the absence of a written contract authorizing him so to do and without reasonable cause, resigns his employment or absents himself from his duty, without having given one month's notice to the Cantonment Authority, or neglects or refuses to perform his duties, or any of them, shall be punishable with imprisonment which may extend to one month.

(2) The Local Government may, by notification in the local official Gazette, direct that on and from such date as may be specified in the notification, the provisions of this section shall apply in the case of any specified class of servants employed by a Cantonment Authority whose functions intimately concern the public health or safety.

(3) For the purposes of this section, "sweeper" includes any menial servant employed by a Cantonment Authority in the removal or disposal of filth or rubbish.

CHAPTER XI.

CONTROL OVER BUILDINGS, STREETS, BOUNDARIES,
TREES, ETC.*Buildings.*

Notice of new buildings. 179. (1) Whoever intends to erect or re-erect any building in a cantonment shall give notice in writing of his intention to the Cantonment Authority.

(2) For the purposes of this Act, a person shall be deemed to erect or re-erect a building who—

- (a) makes any material alteration or enlargement of any building, or
- (b) converts into a place for human habitation any building not originally constructed for that purpose, or
- (c) converts into more than one place for human habitation a building originally constructed as one such place, or
- (d) converts two or more places of human habitation into a greater number of such places, or
- (e) converts into a stable, cattle-shed or cow-house any building originally constructed for human habitation, or
- (f) makes any alteration which there is reason to believe is likely to affect prejudicially the stability or safety of any building or the condition of any building in respect of drainage, sanitation or hygiene, or
- (g) makes any alteration to any building which increases or diminishes the height of, or area covered by, or the cubic capacity of, the building, or which reduces the cubic capacity of any room in the building below the minimum prescribed by any by-law made under this Act.

Conditions of valid notice. 180. (1) A person giving the notice required by section 179 shall specify the purpose for which it is intended to use the building to which such notice relates.

(2) No notice shall be valid until the information required under subsection (1) and any further information and plans which may be required under by-laws made under this Act have been furnished to the satisfaction of the Cantonment Authority along with the notice.

Power of Cantonment Authority to sanction or refuse. 181. (1) The Cantonment Authority may either refuse to sanction the erection or re-erection, as the case may be, of the building, or may sanction it either absolutely or subject to such directions as it thinks fit to make in writing in respect of all or any of the following matters, namely:—

- (a) the free passage or way to be left in front of building ;
- (b) the space to be left about the building to secure free circulation of air and facilitate scavenging and the prevention of fire ;

- (a) the ventilation of the building, the minimum cubic area of the rooms, and the number and height of the storeys of which the building may consist ;
- (d) the provision and position of drains, latrines, urinals, cess-pools or other receptacles for filth ;
- (e) the level and width of the foundation, the level of the lowest floor and the stability of the structure ;
- (f) the line of frontage with neighbouring buildings if the building abuts on a street ;
- (g) the means to be provided for egress from the building in case of fire ;
- (h) the materials and method of construction to be used for external and party walls for rooms, floors, fireplaces and chimneys ;
- (i) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on ; and
- (j) any other matter affecting the ventilation and sanitation of the building ;

and the person erecting or re-erecting the building shall obey all such written directions in every particular.

(2) If the Cantonment Authority decides to refuse to sanction the erection or re-erection of the building, it shall communicate in writing the reasons for such refusal to the person by whom the notice was given.

(3) Where the Cantonment Authority neglects or omits, for one month after the receipt of a valid notice, to make and deliver to the person who has given the notice any order of any nature specified in this section, and such person thereafter, by a written communication, sent by registered post to the Cantonment Authority calls the attention of the Cantonment Authority to the neglect or omission, then, if such neglect or omission continues for a further period of fifteen days from the date of such communication, the Cantonment Authority shall be deemed to have given sanction to the erection or re-erection, as the case may be, unconditionally.

(4) The Cantonment Authority may refuse to sanction the erection or re-erection of any building either on grounds affecting the particular building are in pursuance of a general scheme sanctioned by the Officer Commanding-in-Chief, the Command, restricting the erection or re-erection of buildings within specified limits for the prevention of over-crowding or in the interests of person residing within such limits or for any other public purpose.

182. (1) No compensation shall be claimable by any person for any damage or loss which he may sustain in consequence of the refusal of the Cantonment Authority of sanction to the erection of any building or in respect of any direction issued by it under sub-section (1) of section 181.

(2) The Cantonment Authority shall make compensation to the owner of any building for any actual damage or loss sustained by him in

consequence of the prohibition of the re-erection of any building or of its requiring any land belonging to him to be added to the street :

Provided that the Cantonment Authority shall not be liable to make any compensation in respect of the prohibition of the re-erection of any building which for a period of three years or more immediately preceding such refusal has not been in existence or has been unfit for human habitation.

183. Every sanction for the erection or re-erection of a building given or deemed to have been given by the Cantonment Authority as herein before provided shall be available for one year from the date on which it is given, and, if the building so sanctioned is not begun by the person who has obtained the sanction or some one lawfully claiming under him within that period, it shall not thereafter be begun without fresh sanction obtained in the manner hereinbefore provided.

184. Whoever begins, continues or completes the erection or re-erection of a building—

- (a) without having given a valid notice as required by sections 179 and 180, or before the building has been sanctioned or is deemed to have been sanctioned, or
- (b) without complying with any direction made under sub-section (1) of section 181, or
- (c) when sanction has been refused, or has ceased to be available,

shall be punishable with fine which may extend to five hundred rupees.

185. A Cantonment Authority may, at any time, by notice in writing, direct the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building in any case in which the Cantonment Authority considers that such erection or re-erection is an offence under section 184, and may in any such case in like manner direct the alteration or demolition, as it thinks necessary, of the building, or any part thereof, so erected or re-erected :

Provided that the Cantonment Authority may, instead of requiring the alteration or demolition of any such building or part thereof, accept by way of composition such sum as it thinks reasonable.

186. A Cantonment Authority may make by-laws prescribing—

- (a) the manner in which notice of the intention to erect or re-erect a building in the cantonment shall be given to the Cantonment Authority and the information and plans to be furnished with the notice ;
- (b) the type or description of buildings which may or may not, and the purpose for which a building may or may not, be erected or re-erected in any specified area or areas ;
- (c) the minimum cubic capacity of any room or rooms in a building which is to be erected or re-erected ; and

(d) the fees payable on provision by the Cantonment Authority of plans or specifications of the type of buildings which may be erected in the cantonment or any part thereof.

187. (1) No owner or occupier of any building in a cantonment shall, without the permission in writing of the Cantonment Authority, add to or place against or in front of the building any projection or structure overhanging projecting into, or encroaching on, any street or any drain, sewer or aqueduct therein.

(2) The Cantonment Authority may, by notice in writing, require the owner or occupier of any such building to alter or remove any such projection or encroachment as aforesaid :

Provided that, in the case of any projection or encroachment lawfully in existence at the commencement of this Act, the Cantonment Authority shall make compensation for any damage caused by the removal or alteration.

(3) The Cantonment Authority may, by order in writing, give permission to the owners or occupiers of buildings in any particular street to put up open verandahs, balconies or rooms projecting from any upper storey thereof to an extent beyond the line of the plinth or basement wall at such height from the level ground or street as may be specified in the order.

188. A Cantonment Authority may, by notice in writing, require any person who has, without its permission in writing, newly erected or re-erected any building over any public sewer, drain, culvert, water-course or water-pipe in the cantonment to pull down or otherwise deal with the same as it thinks fit.

189. (1) A Cantonment Authority may, by notice in writing, require the owner or the lessee of any building or land in any street at his own expense and in such manner as the Cantonment Authority thinks fit, to put up and keep in good condition proper troughs and pipes for receiving and carrying rain water from the building or land and for discharging the same or to establish and maintain any other connexion or communication between such building or land and any drain or sewer.

(2) For the purpose of efficiently draining any building or land in the cantonment, the Cantonment Authority may, by notice in writing, require the owner or lessee of the building or land—

(a) to pave, with such materials and in such manner as it thinks fit, any court-yard, alley or passage between two or more buildings, or

(b) to keep any such paving in proper repair.

190. A Cantonment Authority may attach to the outside of any building, or to any tree in the cantonment, brackets for lamps in such manner as not to occasion injury thereto or inconvenience.

Streets.

191. A Cantonment Authority may, by order in writing, permit the temporary occupation of any street, or of any land vested in the Cantonment Authority, for the purpose of depositing any building materials or making any temporary excavation therein or erection thereon, subject to such conditions as it may prescribe for the safety or convenience of the public, and may charge a fee for such permission and may in its discretion withdraw such permission.

192. (1) A Cantonment Authority shall not permanently close any street or open any new street without the previous sanction of the Officer Commanding the District.

(2) A Cantonment Authority may, by public notice, temporarily close any street or any part of a street for repair or for the purpose of carrying out any work connected with drainage, water-supply or lighting or any other work which it is by or under this Act required or permitted to carry out:

Provided that where, owing to any works or repairs or from any other cause, the condition of any street or of any water-works, drain culvert or premises vested in the Cantonment Authority, is such as to be likely to cause danger to the public, the Cantonment Authority shall—

- (a) take all reasonable means for the protection of the adjacent buildings and land and provide reasonable means of access thereto;
- (b) cause sufficient barriers or fences to be erected for the security of life and property, and cause such barriers or fences to be sufficiently lighted from sunset to sunrise.

193. (1) A Cantonment Authority may cause a name to be given to any street and to be affixed on any building in the cantonment in such place as it thinks fit, and may also cause a number to be affixed to any such building.

(2) Whoever destroys, pulls down, defaces or alters any such name or number or puts up any name or number differing from that put up by the order of the Cantonment Authority shall be punishable with fine which may extend to twenty rupees.

Boundaries and Trees.

194. (1) No boundary wall, hedge or fence of any material or description shall be erected in a cantonment without the permission in writing of the Cantonment Authority.

(2) A Cantonment Authority may, by notice in writing, require the owner or lessee of any land in the cantonment—

- (a) to remove from the land any boundary wall, hedge or fence which is, in its opinion, unsuitable, unsightly or otherwise objectionable; or

(b) to construct on the land sufficient boundary walls, hedges or fences of such material, description or dimensions as may be specified in the notice ; or

(c) to maintain the boundary walls, hedges or fences of such land in good order :

Provided that, in the case of any such boundary wall, hedge or fence which was erected with the consent or under the orders of the Cantonment Authority, or which was in existence at the commencement of this Act, the Cantonment Authority shall make compensation for any damage caused by the removal thereof.

(3) The Cantonment Authority may, by notice in writing, require the owner, lessee or occupier of any such land to cut or trim any hedge on the land in such manner and within such time as may be specified in the notice.

195. (1) Where, in the opinion of a Cantonment Authority, the felling of any tree of mature growth standing in a private enclosure in the cantonment is necessary for any reason, the Cantonment Authority may, by notice in writing, require the owner, lessee or occupier of the land to fell the tree within such time as may be specified in the notice.

Felling, lopping and trimming of trees.

(2) A Cantonment Authority may—

(a) cause to be lopped or trimmed any tree standing on land in the cantonment which belongs to the Government ; or

(b) by public notice require all owners, lessees or occupiers of land in the cantonment, or by notice in writing require the owner, lessee or occupier of any such land, to lop or trim, in such manner as may be specified in the notice, all or any trees standing on such land or to remove any dead trees from such land.

6. Whoever, without the permission in writing of the Cantonment Authority, digs up the surface of any open space in the cantonment, which is not private property, shall be punishable with fine which may extend to twenty rupees, and, in the case of a continuing offence, to an additional fine which may extend to five rupees for every day after the first during which the offence continues.

Digging of public land.

197. (1) If, in the opinion of a Cantonment Authority, the working of a quarry in the cantonment, or the removal of stone, earth or other material from the soil in any place in the cantonment, is dangerous to persons residing in or frequenting the neighbourhood of such quarry or place, or creates, or is likely to create, a nuisance, the Cantonment Authority may, by notice in writing, prohibit the owner, lessee or occupier of such quarry or place or the person responsible for such making or removal, from continuing or permitting the working of such quarry or the moving of such material, or require him to take such steps in the matter as the Cantonment Authority may direct for the purpose of preventing danger or abating the nuisance arising or likely to arise therefrom.

Improper use of land.

(2) If, in any case referred to in sub-section (1), the Cantonment Authority is of opinion that such a course is necessary in order to prevent imminent danger, it may, by order in writing, require a proper hoarding or fence to be put up for the protection of passers-by.

CHAPTER XII.

MARKETS, SLAUGHTER-HOUSES, TRADES AND OCCUPATION.

198. (1) A Cantonment Authority may provide and maintain, either within or without the Cantonment, public markets and public slaughter-houses, to such number as it thinks fit, together with stalls, shops, sheds, pens and other buildings or conveniences for the use of persons carrying on trade or business in or frequenting such markets or slaughter-houses, and may provide and maintain in any such market buildings, places, machines, weights, scales and measures for the weighing or measurement of goods sold therein.

(2) When such market or slaughter-house is situated beyond cantonment limits, the Cantonment Authority shall have the same power for the inspection and proper regulation of the same as if it were situated within those limits.

(3) The Cantonment Authority may at any time, by public notice, close any public market or public slaughter-house or any part thereof.

(4) Nothing in this section shall be deemed to authorize the establishment of a public market or public slaughter-house within the limits of any area administered by any local authority other than the Cantonment Authority without the permission of such local authority or otherwise than on such conditions as such local authority may approve.

199. (1) No person shall, without the general or special permission in writing of the Cantonment Authority, sell or expose for sale any animal or article in any public market.

(2) Any person contravening the provisions of this section, and any animal or article exposed for sale by such person, may be summarily removed from the market by or under the orders of the Executive Officer or any officer or servant of the Cantonment Authority authorized by it in this behalf.

Levy of stallages,
rents and fees.

200. A Cantonment Authority may—

- (a) charge for the occupation or use of any stall, shop, standing, shed or pen in a public market, or public slaughter-house, or for the right to expose goods for sale in a public market, or for weighing or measuring goods sold therein, or for the right to slaughter animals in any public slaughter-house, such stallages, rents and fees as it thinks fit ; or
- (b) with the sanction of the Officer Commanding the District, farm the stallages, rents and fees leviable as aforesaid on any portion thereof for any period not exceeding one year at a time ; or

- (c) put up to public auction, or, with the sanction of the Officer Commanding the District, dispose of by private sale, the privilege of occupying or using any stall, shop, standing, shed or pen in a public market or public slaughter-house for such term and on such conditions as it thinks fit.

201. A copy of the table of stallages, rents and fees, if any, leviable in any public market or public slaughter-house, and of the by-laws made under this Act for the purpose of regulating the use of such market or slaughter-house, printed in the English language and in such other language or languages as the Cantonment Authority may direct, shall be affixed in some conspicuous place in the market or slaughter-house.

Stallages, rents,
etc., to be publish-
ed.

202. (1) No place in a cantonment other than a public market shall be used as a market, and no place in a cantonment other than a public slaughter-house shall be used as a slaughter-house, unless such place has been licensed as a market or slaughter-house, as the case may be, by the Cantonment Authority :

Private markets
and slaughter-
houses.

Provided that nothing in this sub-section shall apply in the case of a slaughter-house established and maintained by the Government.

(2) Nothing in sub-section (1) shall be deemed—

- (a) to restrict the slaughter of any animal in any place on the occasion of any festival or ceremony, subject to such conditions as to prior or subsequent notice as the Executive Officer with the previous sanction of the District Magistrate may, by public or special notice, impose in this behalf, or
- (b) to prevent the Executive Officer, with the sanction of the Cantonment Authority, from setting apart places for the slaughter of animals in accordance with religious custom when such animals are slaughtered for consumption by the troops or for the purpose of the sale of the flesh thereof to the troops.

(3) Whoever omits to comply with any condition imposed by the Executive Officer under clause (a) of sub-section (2) shall be punishable with fine which may extend to fifty rupees and, in the case of a continuing offence, with an additional fine which may extend to ten rupees for every day after the first during which the offence is continued.

203. (1) A Cantonment Authority may charge such fees as it thinks fit to impose for the grant of a license to any person to open a private market or private slaughter-house in the cantonment, and may grant such license subject to such conditions, consistent with this Act and any by-laws made thereunder, as it thinks fit to impose.

Conditions of
grant of license for
private market or
slaughter house.

(2) The Cantonment Authority may refuse to grant any such license without giving reasons for such refusal.

204. (1) Any person who keeps open for public use any market or slaughter-house in respect of which a license is required by or under this Act, without obtaining license therefor, or while the license therefor is suspended, or after the same has been cancelled, shall be punishable with fine which may extend to fifty rupees and, in the case of a continuing offence, with an additional fine which may extend to five rupees for every day after the first during which the offence is continued.

(2) When a license to open a private market or private slaughter-house is granted or refused or is suspended or cancelled, the Cantonment Authority shall cause a notice of the grant, refusal, suspension or cancellation to be posted in English, and in such other language or languages as it thinks necessary, in some conspicuous place by or near the entrance to the place to which the notice relates.

205. Whoever, knowing that any market or slaughter-house has been opened to the public without a license having been obtained therefor when such license is required by or under this Act, or that the license granted therefor is for the time being suspended or that it has been cancelled, sells or exposes for sale any article in such market, or slaughters any animal in such slaughter-house, shall be punishable with fine which may extend to fifty rupees and, in the case of a continuing offence, with an additional fine which may extend to five rupees for every day after the first during which the offence is continued.

206. (1) Where, in the opinion of the Cantonment Authority, it is necessary on sanitary grounds so to do, it may, by public notice, prohibit for such period, not exceeding one month, as may be specified in the notice, or for such further period, not exceeding one month, as it may specify by a like notice, the use of any private slaughter-house specified in the notice or the slaughter therein of any animal of any description so specified.

(2) A copy of every notice issued under sub-section (1) shall be conspicuously posted in the slaughter-house to which it relates.

207. (1) Any servant of a Cantonment Authority, authorized by order in writing in this behalf by the President of the Board, if any, or the Health Officer, may, if he has reason to believe that any animal has been, is being, or is about to be slaughtered in any place in contravention of the provisions of this Chapter, enter into and inspect any such place at any time, whether by day or by night.

(2) Every such order shall specify the place to be entered and the locality in which the same is situated and the period, which shall not exceed seven days, for which the order is to remain in force.

208. A Cantonment Authority may, with the approval of the Local Government, make by-laws consistent with this Act to provide for all or any of the following matters, namely :—

(a) the days on, and the hours during, which any private market or private slaughter-house may be kept open for use ;

- (b) the regulation of the design, ventilation and drainage of such markets and slaughter-houses, and the material to be used in the construction thereof;
- (c) the keeping of such markets and slaughter-houses and lands and buildings appertaining thereto in a clean and sanitary condition, the removal of filth and refuse therefrom, and the supply therein of pure water and of a sufficient number of latrines and urinals for the use of persons using or frequenting the same;
- (d) the manner in which animals shall be stalled at a slaughter-house;
- (e) the manner in which animals may be slaughtered;
- (f) the disposal or destruction of animals offered for slaughter which are, from disease or any other cause, unfit for human consumption; and
- (g) the destruction of carcasses which from disease or any other cause are found after slaughter to be unfit for human consumption.

Trades and Occupations.

209. (1) A Cantonment Authority may provide suitable places for the exercise by washermen of their calling, and may require payment of such fees for the use thereof as it thinks fit.

Provision of washing places.

(2) Where the Cantonment Authority has provided such places as aforesaid it may, by public notice, prohibit the washing of clothes by washermen at any other place in the cantonment:

Provided that such prohibition shall not be deemed to apply to the washing by a washerman of his own clothes or of the clothes of any other person who is an occupier of the place at which they are washed.

(3) Whoever contravenes any prohibition contained in a notice issued under sub-section (2) shall be punishable with fine which may extend to twenty rupees.

Licenses required for carrying on of certain occupations.

210. (1) No person of any of the following classes, namely:—

- (a) butchers and vendors of poultry, game or fish;
- (b) persons keeping pigs for profit, and dealers in the flesh of pigs which have been slaughtered in India;
- (c) persons keeping milch cattle or milch goats for profit;
- (d) persons keeping for profit any animals other than pigs, milch cattle or milch goats;
- (e) dairymen, buttermen and makers and vendors of ghee;
- (f) makers of bread, biscuits or cake, and vendors of bread, biscuits or cake made in India;
- (g) vendors of fruit or vegetables;
- (h) manufacturers of aerated or other potable waters or of ice or ice-cream, and vendors of the same;
- (j) vendors of any medicines, drugs or articles of food or drink for human consumption (other than the flesh of pigs, milk,

butter, bread, biscuits, cake, fruit, vegetables, aerated or other potable waters or ice or ice-cream) which are of a perishable nature ;

- (k) vendors of water to be used for drinking purposes ;
- (l) washermen ;
- (m) dealers in hay, straw, wood, charcoal or other inflammable material ;
- (n) dealers in fire-works, kerosene oil, petroleum or any other inflammable oil or spirit ;
- (o) tanners and dyers ;
- (p) persons carrying on any trade or occupation from which offensive or unwholesome smells arise ;
- (q) vendors of wheat, rice and other grain or of flour ; and
- (r) makers and vendors of sugar or sweetmeats ; shall carry on his trade, calling or occupation in any part of a cantonment unless he has applied for and obtained a license in this behalf from the Cantonment Authority.

(2) A license granted under sub-section (1) shall be valid for one year, and the grant of such license shall not be withheld by the Cantonment Authority unless it has reason to believe that the business which it is intended to establish or maintain would be offensive or dangerous to the public.

(3) Notwithstanding anything contained in sub-section (1),—

- (a) no person who was, at the commencement of this Act, carrying on his trade, calling or occupation in any part of a cantonment shall be bound to apply for a license for carrying on such trade or occupation in that part until he has received from the Cantonment Authority not less than three months' notice in writing of his obligation to do so, and if the Cantonment Authority refuses to grant him a license, it shall pay compensation for any loss incurred by reason of such refusal ;
- (b) no person shall be required to take out a license for the sale or storage of petroleum or for the sale or possession for sale of poisons or white arsenic in any case in which he is required to take out a license for such sale, storage or possession for sale by or under the Indian Petroleum Act, 1899, or the Poisons Act, 1919.

(4) The Cantonment Authority may charge for the grant of licenses under this section such fees as it may fix with the previous sanction of the Local Government.

211. A license granted to any person under section 210 shall specify the part of the cantonment in which the licensee may carry on his trade, calling or occupation, and may regulate the hours and manner of transport within the cantonment of any specified articles intended for human consumption, and may contain any other conditions which the Cantonment Authority thinks fit to impose in accordance with by-laws made under this Act.

Conditions which may be attached to licenses.

VIII of 1899.
XII of 1919.

General provisions.

212. If a Cantonment Authority is satisfied that any place used under a license granted under this Chapter is a nuisance or is likely to be dangerous to life, health or property, the Cantonment Authority may, by notice in writing, require the owner, lessee or occupier thereof to discontinue the use of such place or to effect such alterations, additions, or improvements as will, in the opinion of the Cantonment Authority, render it no longer a nuisance or dangerous.

213. Whoever carries on any trade, calling or occupation for which a license is required without obtaining a license therefor or while the license therefor is suspended or after the same has been cancelled, and whoever, after receiving a notice under section 212, uses or allows to be used any building or place in contravention thereof, shall be punishable with fine which may extend to two hundred rupees and, in the case of a continuing offence, with an additional fine which may extend to forty rupees for every day after the first during which the offence is continued.

214. Whoever feeds or allows to be fed on filthy or deleterious substances any animal, which is kept for the purpose of supplying milk to, or which is intended to be used as food for, the inhabitants of a cantonment or allows it to graze in any place in which grazing has, for sanitary reasons, been prohibited by public notice by the Cantonment Authority, shall be punishable with fine which may extend to fifty rupees.

Entry, Inspection and Seizure.

215. (1) The President or the Vice-President of a Board, the Executive Officer, the Health Officer, the Assistant Health Officer, or any other officer or servant of a Cantonment Authority authorised by it in writing in this behalf,—

- (a)** may at any time enter into any market, building, shop, stall or other place in the cantonment for the purpose of inspecting, and may inspect, any animals, article or thing intended for human food or drink or for medicine, whether exposed or hawked about for sale or deposited in or brought to any place for the purpose of sale, or of preparation for sale, or any utensil or vessel for preparing, manufacturing or containing any such article, or thing, and may enter into and inspect any place used as a slaughter-house and may examine any animal or article therein ;
- (b)** may seize any such animal, article or thing which appears to him to be diseased or unwholesome or unfit for human food or drink or medicine, as the case may be, or to be adulterated or to be not what is represented to be, or any such utensil or vessel which is of such a kind or in such a state as to render any article prepared, manufactured or contained therein unwholesome or unfit for human food or for medicine, as the case may be.

(2) Any article seized under sub-section (1) which is of a perishable nature may, under the orders of the Health Officer or the Assistant Health Officer, forthwith be destroyed if, in his opinion, it is diseased, unwholesome or unfit for human food, drink or medicine, as the case may be.

(3) Every animal, article, utensil, vessel or other thing seized under sub-section (1) shall, if it is not destroyed under sub-section (2), be taken before a Magistrate.

(4) The owner or person in possession, at the time of seizure under sub-section (1), of any animal or carcase which is diseased or of any article or thing which is unwholesome or unfit for human food, drink or medicine, as the case may be, or is adulterated or is not what it is represented to be, or of any utensil or vessel which is of such kind, or in such state as is described in clause (b) of sub-section (1), shall be punishable with fine which may extend to one hundred rupees, and the animal, article, utensil, vessel or other thing shall be liable to be forfeited to the Cantonment Authority or to be destroyed or to be so disposed of as to prevent its being exposed for sale or used for the preparation of food, drink or medicine, as the case may be.

Explanation I.—If any such article, having been exposed or stored in, or brought to, any place mentioned in sub-section (1) for sale as ghee, contains any substance not exclusively derived from milk, it shall be deemed, for the purposes of this section, to be an article which is not what it is represented to be.

Explanation II.—Meat subjected to the process of blowing shall be deemed to be unfit for human food.

Explanation III.—The article of food or drink shall not be deemed to be other than what it is represented to be merely by reason of the fact that there has been added to it some substance not injurious to health:

Provided that—

- (a) such substance has been added to the article because the same is required for the preparation or production thereof as an article of commerce in a state fit for carriage or consumption and not fraudulently to increase the bulk, weight or measure of the food or drink or conceal the inferior quality thereof, or
- (b) in the process of production, preparation or conveyance of such article of food or drink, the extraneous substance has unavoidably become intermixed therewith, or
- (c) the owner or person in possession of the article has given sufficient notice by means of a label distinctly and legibly written or printed thereon or therewith, or by other means of a public description, that such substance has been added, or
- (d) such owner or person has purchased the article with a written warranty that it was of a certain nature, substance and quality and had no reason to believe that it was not of such nature, substance and quality, and has exposed it or hawked it about or brought it for sale in the same state and by the same description as that in and by which he purchased it.

Import of Cattle and Flesh.

216. (1) No person shall, without the permission in writing of the Cantonment Authority, bring into a cantonment any animal intended for human consumption, or the flesh of any animal slaughtered outside the cantonment otherwise than in a slaughter-house maintained by the Government or the Cantonment Authority.

(2) Any animal or flesh brought into a cantonment in contravention of sub-section (1) may be seized by the Executive Officer or by any servant of the Cantonment Authority and sold or otherwise disposed of as the Cantonment Authority may direct, and, if it is sold, the sale-proceeds may be credited to the cantonment fund.

(3) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to fifty rupees.

(4) Nothing in this section shall be deemed to apply to cured or preserved meat or to animals driven or meat carried through a cantonment for consumption outside thereof, or to meat brought into a cantonment by any person for his immediate domestic consumption :

Provided that the Cantonment Authority may, by public notice, direct that the provisions of this section shall apply to cured or preserved meat of any specified description or brought from any specified place.

CHAPTER XIII.

WATER-SUPPLY, DRAINAGE AND LIGHTING.

Water-supply.

217. (1) In every cantonment where a sufficient supply of pure water for domestic use does not already exist the Cantonment Authority shall provide or arrange for the provision of such a supply.

(2) The Cantonment Authority shall, as far as possible, make adequate provision that such supply shall be continuous throughout the year, and that the water shall be at all times pure and fit for human consumption.

218. (1) The Cantonment Authority may, with the previous sanction of the Local Government, by public notice, declare any lake, stream, spring, well, tank, reservoir or other source, whether within or without the limits of the cantonment other than a source of water-supply under the control of the Military Works Services or the Public Works Department from which water is or may be made available for the use of the public in the cantonment to be a source of public water-supply.

(2) Every such source shall be under the control of the Cantonment Authority.

Power to require maintenance or closing of private source of public drinking water-supply.

219. The Cantonment Authority may, by notice in writing, require the owner or any person having the control of any source of public water-supply which is used for drinking purposes—

(a) to keep the same in good order and to clear it from time to time of silt, refuse and decaying vegetation, or

- (b) to protect the same from contamination in such manner as the Cantonment Authority may direct, or
- (c) if the water therein is proved to the satisfaction of the Cantonment Authority to be unfit for drinking purposes, to take such measures as may be specified in the notice to prevent the public from having access to or using such water :

Provided that, in the case of a well, such person as aforesaid may, instead of complying with the notice, signify in writing his desire to be relieved of all responsibility for the proper maintenance of the well and his readiness to place it under the control and supervision of the Cantonment Authority for the use of the public, and, if he does so, he shall not be bound to carry out the requisition, and the Cantonment Authority shall undertake the control and supervision of the well.

220. (1) The Cantonment Authority may permit the owner, lessee or occupier of any building or land to connect the building or land with a source of public water-supply by means of communication pipes of such size and description as it may prescribe for the purpose of obtaining water for domestic use.

(2) The occupier of every building so connected with the water-supply shall be entitled to have for domestic use, in return for the water tax, if any, such quantity of water as the Cantonment Authority may determine.

(3) All water supplied in excess of the quantity to which such supply is limited under sub-section (2) and, in a cantonment in which a water tax is not imposed, all water supplied under this section, shall be paid for at such rate as the Cantonment Authority may fix,

(4) The supply of water for domestic use shall not be deemed to include any supply--

- (a) for animals or for washing vehicles where such animals or vehicles are kept for sale or hire ;
- (b) for any trade, manufacture or business ;
- (c) for fountains, swimming baths or any ornamental or mechanical purpose ;
- (d) for gardens or for purposes of irrigation ;
- (e) for making or watering roads or paths ; or
- (f) for building purposes.

221. If it appears to the Cantonment Authority that any building or land in the cantonment is without a proper supply of pure water, the Cantonment Authority may, by notice in writing, require the owner, lessee or occupier of the building or land to obtain from a source of public water-supply such quantity of water as is adequate to the requirements of the persons usually occupying or employed upon the building or land, and to provide communication pipes of the prescribed size and description, and to take all necessary steps for the above purposes.

Power to require water-supply to be taken.

222. (1) The Cantonment Authority may, by agreement, supply, from any source of public water-supply, the owner, lessee or occupier of any building or land in the cantonment with any water for any purpose, other than a domestic purpose, on such terms and conditions, consistent with this Act and the rules and by-laws made thereunder, as may be agreed upon between the Cantonment Authority and such owner, lessee or occupier.

(2) The Cantonment Authority may withdraw such supply or curtail the quantity thereof at any time if it should appear necessary to do so for the purpose of maintaining sufficient supply of water for domestic use by inhabitants of the cantonment.

223. Notwithstanding any obligation imposed on Cantonment Authorities under this Act, a Cantonment Authority shall not be liable to any forfeiture, penalty or damages for failure to supply water or for curtailing the quantity thereof if the failure or curtailment, as the case may be, arises from accident or from drought or other unavoidable cause unless, in the case of an agreement for the supply of water under section 222, the Cantonment Authority has made express provision for forfeiture, penalty or damages in the event of such failure or curtailment.

224. Notwithstanding anything hereinbefore contained or contained in any agreement under section 222, the supply of water by a Cantonment Authority to any building or land shall be, and shall be deemed to have been, granted subject to the following conditions, namely:—

- (a) the owner, lessee or occupier of any building or land in or on which water supplied by the Cantonment Authority is wasted by reason of the pipes, drains or other works being out of repair shall, if he has knowledge thereof, give notice of the same to such officer as the Cantonment Authority may appoint in this behalf;
- (b) the Executive Officer or any other officer or servant of the Cantonment Authority authorized by it in writing in this behalf may enter into or on any premises supplied with water by the Cantonment Authority, for the purpose of examining all pipes, taps, works and fittings connected with the supply of water and of ascertaining whether there is any waste or misuse of such water;
- (c) the Cantonment Authority may, after giving notice in writing, cut off the connection between any source of public water-supply and any building or land to which water is supplied for any purpose therefrom, or turn off such supply if—
 - (i) the owner or occupier of the building or land neglects to pay the water-tax or other charges connected with the water-supply within one month from the date on which such tax or charge falls due for payment;
 - (ii) the occupier refuses to admit the Executive Officer or other authorised officer or servant of the Cantonment Authority into the building or land for the purpose of making any

- examination or inquiry authorised by clause (b) or prevents the making of such examination or inquiry ;
- (iii) the occupier wilfully or negligently misuses or causes waste of water ;
 - (iv) the occupier wilfully or negligently injures or damages his meter or any pipe or tap conveying water from the water-works ;
 - (v) any pipes, taps, works or fittings connected with the supply of water to the building or land are found, on examination by the Executive Officer, to be out of repair to such an extent as to cause a waste of water ;
 - (d) the expense of cutting off the connection or of turning off the water in any case referred to in clause (c) shall be paid by the owner or occupier of the building or land ;
 - (e) no action taken under or in pursuance of clause (c) shall relieve any person from any penalty or liability which he may otherwise have incurred.

225. A Cantonment Authority may allow any person not residing within the limits of the cantonment to take or be supplied with water for any purpose from any source of public water-supply on such terms as it may prescribe, and may at any time withdraw or curtail such supply.

226. Whoever—

(a) uses for other than domestic purposes any water supplied by a Cantonment Authority for domestic use, or

(b) where water is supplied by agreement with a Cantonment Authority for a specified purpose, uses that water for any other purpose,

shall be punishable with fine which may extend to fifty rupees, and the Cantonment Authority shall be entitled to recover from him the price of the water misused.

Water, Drainage and other Connections.

Power of Cantonment Authority to lay wires, connections, etc.

227. A Cantonment Authority may carry any cable, wire, pipe, drain, sewer or channel of any kind,—

(a) for the purpose of carrying out, establishing or maintaining any system of water-supply, lighting, drainage or sewerage, through, across, under or over any road or street, or any place laid out or intended as a road or street, or, after giving reasonable notice in writing to the owner or occupier into, through, across, under or over any land or building, or up the side of any building, situated within the cantonment, or

(b) for the purpose of supplying water or of the introduction or distribution of outfall of water or for the removal or outfall

of sewage, after giving reasonable notice in writing to the owner or occupier, into, through, across, under or over any land or building, or up the side of any building, situated outside the cantonment;

and may at all times do all acts and things which may be necessary or expedient for repairing or maintaining any such cable, wire, pipe, drain, sewer or channel in an effective state for the purpose for which the same may be used or is intended to be used :

• Provided that no nuisance shall be caused in excess of what is reasonably necessary for the proper execution of the work :

Provided, further, that compensation shall be payable to the owner or occupier for any damage sustained by him which is directly occasioned by the carrying out of any such operation.

228. In the event of any cable, wire, pipe, drain, sewer or channel being laid or carried above the surface of any land or through, over or up the side of any building, such cable, wire, pipe, drain, sewer or channel shall be so laid or carried as to interfere as little as possible with the rights of the owner or occupier to the due enjoyment of such land or building, and compensation shall be payable by the Cantonment Authority in respect of any substantial interference with the right to any such enjoyment.

Wires, etc., laid above surface of ground.

229. No person shall for any purpose whatsoever, without the permission of the Cantonment Authority, at any time make or cause to be made any connection or communication with any cable, wire, pipe, drain, sewer or channel constructed or maintained by, or vested in, a Cantonment Authority.

Connection with main not to be made without permission.

230. A Cantonment Authority may prescribe the size of the ferrules to be used for the supply of gas, if any, and may establish meters or other appliances for the purpose of testing the quantity of any water, or the quantity or quality of any gas supplied to any premises by the Cantonment Authority.

Power to prescribe ferrules and to establish meters, etc.

231. The ferrules, communication pipes, connections, meters, stand-pipes and all fittings thereon or connected therewith leading from water mains or from pipes, drains, sewers or channels into any house or land, to which water or gas is supplied by a Cantonment Authority, and the pipes, fittings and works inside any such house or within the limits of any such land, shall in all cases be executed subject to the inspection and to the satisfaction of the Cantonment Authority.

Power of inspection.

232. A Cantonment Authority may fix the charges to be made for the establishment by them or through their agency of communications from, and connections with, mains, or pipes for the supply of water, or gas, or for meters or other appliances for testing the quantity or quality thereof supplied, and may levy such charges accordingly.

Power to fix rates and charges.

Application of this Chapter to Government Water-supplies.

233. (1) Where in any cantonment there is a water supply under the control of the Military Works Services or the Public Works Department, the Officer of the Military Works Services or of the Public Works Department, as the case may be, in charge of such water-supply (hereinafter in this section and in section 234 referred to as the Officer) may publish in the cantonment in such manner as he thinks fit a notice declaring that any lake, stream, spring, well, tank, reservoir or other source, whether within or without the limits of the cantonment (other than a source of public water-supply under the control of the Cantonment Authority) is a source of public water-supply and may, for the purpose of keeping any such source in good order or of protecting it from contamination or from use, require the Cantonment Authority to exercise any power conferred upon that Authority by section 219.

(2) In the case of any water-supply such as is referred to in sub-section (1), the following provisions of this Chapter, namely, the provisions of sections 220, 222, 223, 224, 226, 227, 228, 229, 230, 231 and 232 shall, as far as may be, be applicable in respect of the supply of water to the cantonment, and for the purpose of such application references to the Cantonment Authority shall be construed as references to the Officer, and references to the Executive Officer or other officer or servant of the Cantonment Authority shall be construed as references to such person as may be authorized in this behalf by the Officer.

234. In any case in which the provisions of section 233 apply, the water-tax, if any, imposed in the cantonment and all other charges arising out of the supply of water which may be imposed under provisions of this Chapter as applied by section 233 shall be recovered by the Cantonment Authority, and all monies so recovered, or such proportion thereof as the Local Government may in each case determine, shall be paid by the Cantonment Authority to the Officer.

CHAPTER XIV.

REMOVAL AND EXCLUSION FROM CANTONMENTS AND
SUPPRESSION OF SEXUAL IMMORALITY.

235. The Commanding Officer of a cantonment may, on receiving information that any building in the cantonment is used as a brothel or for purposes of prostitution, by order in writing setting forth the substance of the information received, summon the owner, lessee, tenant or occupier of the building to appear before him either in person or by an authorized agent, and, if the Commanding Officer of the cantonment is then satisfied as to the truth of the information, he may, by order in writing, direct the owner, lessee, tenant or occupier, as the case may be, to discontinue such use of the building within such period as may be specified in the order.

Power to remove
brothels and prosti-
tutes.

236. (1) Whoever in a cantonment loiters for the purpose of prostitution or importunes any person to the commission of sexual immorality, shall be punishable with imprisonment which may extend to one month, or with fine which may extend to two hundred rupees.

Penalty for loiter-
ing and importun-
ing for purposes of
prostitution.

(2) No prosecution for an offence under this section shall be instituted except on the complaint of the person importuned, or of a military officer in whose presence the offence was committed, or of a member of the Military or Air Force Police, being employed in the cantonment and authorized in this behalf by the Commanding Officer of the cantonment, in whose presence the offence was committed, or of a police officer not below the rank of a sub-inspector who is employed in the cantonment and authorized in this behalf by the Commanding Officer of the cantonment.

237. If the Commanding Officer of a cantonment is, after such inquiry as he thinks necessary, satisfied that any person residing in or frequenting the cantonment is a prostitute or has been convicted of an offence under section 236, or of the abetment of such an offence, he may cause to be served on such person an order in writing requiring such person to remove from the cantonment within such time as may be specified in the order, and prohibiting such person from re-entering it without the permission in writing of the Commanding Officer of the cantonment.

Removal of few persons from cantonment.

238. (1) A Magistrate of the first class, having jurisdiction in a cantonment, on receiving information that any person residing in or frequenting the cantonment—

- (a) is a disorderly person who has been convicted more than once of gaming or who keeps or frequents a common gaming house, a disorderly drinking shop or a disorderly house of any other description, or
- (b) has been convicted more than once, either within the cantonment or elsewhere, of an offence punishable under Chapter XVII of the Indian Penal Code, or
- (c) has been convicted, either within the cantonment or elsewhere, of any offence punishable under section 156 of the Army Act, or
- (d) has been ordered under Chapter VIII of the Code of Criminal Procedure, 1898, either within the cantonment or elsewhere, to execute a bond for his good behaviour,

XLV of 1860.

44 & 45 Vict.,
c. 58.

V of 1898.

may record in writing the substance of the information received, and may issue a summons to such person requiring such person to appear and show cause why he should not be required to remove from the cantonment and be prohibited from re-entering it.

(2) Every summons issued under sub-section (1) shall be accompanied by a copy of the record aforesaid, and the copy shall be served along with the summons on the person against whom the summons is issued.

(3) The Magistrate shall, when the person so summoned appears before him, proceed to inquire into the truth of the information received and take such further evidence as he thinks fit, and if, upon such inquiry, it appears to him that such person is a person of any kind described in sub-section (1) and that it is necessary for the maintenance of good order in the cantonment that such person should be required to remove therefrom and be prohibited from re-entering the cantonment, the Magistrate

shall report the matter to the Commanding Officer of the cantonment, and, if the Commanding Officer of the cantonment so directs, shall cause to be served on such person an order in writing requiring him to remove from the cantonment within such time as may be specified in the order and prohibiting him from re-entering it without the permission in writing of the Commanding Officer of the cantonment.

239. (1) If any person in a cantonment causes or attempts to cause or does any act which he knows is likely to cause disloyalty, disaffection or breaches of discipline amongst any portion of His Majesty's forces or is a person who, the Commanding Officer of the cantonment has reason to believe, is likely to do any such act, the Commanding Officer of the cantonment may make an order in writing setting forth the reasons for the making of the same and requiring such person to remove from the cantonment within such time as may be specified in the order and prohibiting him from re-entering it without the permission in writing of the Commanding Officer of the cantonment:

Provided that no order shall be made under this section against any person unless he has had a reasonable opportunity of being informed of the grounds on which it is proposed to make the order and of showing cause why the order should not be made.

(2) Every order made under sub-section (1) shall be sent to the Superintendent of Police of the district, who shall cause a copy thereof to be served on the person concerned.

(3) Upon the making of any order under sub-section (1), the Commanding Officer of the cantonment shall forthwith send a copy of the same to the Local Government.

(4) The Local Government may, of its own motion and shall, on application made to it in this behalf within one month of the date of the order by the person against whom the order has been made, call upon the District Magistrate to make, after such inquiry as the Local Government may prescribe, a report regarding the justice of the order and the necessity therefor. At every such inquiry the person against whom the order has been made shall be given an opportunity of being heard in his own defence.

(5) The Local Government may, at any time after the receipt of a copy of an order sent under sub-section (3) or, where a report has been called for under sub-section (4), on receipt of that report, if it is of opinion that the order should be varied or rescinded, refer the case to the Governor-General in Council, who shall pass such orders thereon as he thinks fit.

(6) Any person who has been excluded from a cantonment by an order made under this section may, at any time after the expiry of one month from the date thereof, apply to the Officer Commanding-in-Chief, the Command, for the rescission of the same and, on such application being made, the said Officer may, after making such inquiry, if any, as he thinks necessary, either reject the application or rescind the order.

Penalty.

240. Whoever—

(a) fails to comply with an order issued under this Chapter within the period specified therein, or, whilst an order prohibiting

him from re-entering a cantonment without permission is in force re-enters the cantonment without such permission, or

- (b) knowing that any person has, under this Chapter, been required to remove from the cantonment and has not obtained the requisite permission to re-enter it, harbours or conceals such person in the cantonment,

shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing offence, with an additional fine which may extend to twenty rupees for every day after the first during which he has persisted in the offence.

CHAPTER XV.

POWERS, PROCEDURE, PENALTIES AND APPEALS.

Entry and Inspection.

241. It shall be lawful for the President or the Vice-President of a Board, or the Executive Officer, or the Health Officer or Assistant Health Officer, or any person specially authorized by the Health Officer or the Assistant Health Officer, or for any other person authorized by general or special order of a Cantonment Authority in this behalf, to enter into or upon any building or land with or without assistants or workmen in order to make any inquiry, inspection, measurement, valuation or survey, or to execute any work, which is authorized by or under this Act or which it is necessary to make or execute for any of the purposes or in pursuance of any of the provisions of this Act or of any rule, by-law or order made thereunder :

Provided that nothing in this section shall be deemed to confer upon any person any power such as it referred to in section 207 or section 215 or to authorize the conferment upon any person of any such power.

242. With the previous sanction of the President, any member of a Board may inspect any work or institution constructed or maintained, in whole or part, at the expense of the Board, and any register, book, accounts or other document belonging to, or in the possession of the Board.

Powers of inspection by member of a Board.

Power of inspection, etc.

243. (1) A Cantonment Authority may, by general or special order, authorize any person—

- (a) to inspect any drain, privy, latrine, urinal, cesspool, pipe, sewer or channel in or on any building or land in the cantonment, and, in his discretion, to cause the ground to be opened for the purpose of preventing or removing any nuisance arising from the drain, privy, latrine, urinal, cesspool, pipe, sewer or channel, as the case may be ;
- (b) to examine works under construction in the cantonment, to take levels or to remove, test, examine, replace or read any meter.

(2) If, on such inspection, the opening of the ground is found to be necessary for the prevention or removal of a nuisance, the expenses thereby incurred shall be paid by the owner or occupier of the land or building.

but if it is found that no nuisance exists or but for such opening would have arisen, the ground or portion of any building, drain or other work opened, injured or removed for the purpose of such inspection shall be filled in, reinstated, or made good, as the case may be, by the Cantonment Authority.

244. (1) The Executive Officer of a cantonment may, with or without assistants or workmen, enter on any land within fifty yards of any work authorized by or under this Act for the purpose of depositing thereon any soil, gravel, stone or other materials, or of obtaining access to such work, or for any other purpose connected with the carrying on of the same.

(2) The Executive Officer shall, before entering on any land under sub-section (1), give the occupier, or, if there is no occupier, the owner not less than three days' previous notice in writing of his intention to make such entry, and shall state the purpose thereof, and shall, if so required by the occupier or owner, fence off so much of the land as may be required for such purpose.

(3) The Executive Officer shall, in exercising any power conferred by this section, do as little damage as may be, and compensation shall be payable by the Cantonment Authority to the owner or occupier of such land, or to both, for any such damage whether permanent or temporary.

245. It shall be lawful for any person, authorized by or under this Act to make any entry into any place, to open or cause to be opened any door, gate or other barrier—

(a) if he considers the opening thereof necessary for the purpose of such entry; and

(b) if the owner or occupier is absent, or being present refuses to open such door, gate or barrier.

246. Save as otherwise expressly provided in this Act, no entry authorized by or under this Act shall be made except between the hours of sunrise and sunset.

247. Save as otherwise expressly provided in this Act, no building or land shall be entered without the consent of the occupier, or if there is no occupier, of the owner thereof, and no such entry shall be made without giving the said occupier or owner, as the case may be, not less than four hours' written notice of the intention to make such entry:

Provided that no such notice shall be necessary if the place to be inspected is a stable for horses or a shed for cattle, or a latrine, privy or urinal, or a work under construction.

248. When any place used as a human dwelling is entered under this Act, due regard shall be paid to the social and religious customs and usages of the occupants of the place entered, and no apartment in the actual occupancy of a female shall be entered or broken open until she has been informed that she is at liberty to withdraw and every reasonable facility has been afforded to her for withdrawing.

249. Whoever obstructs or molests any person employed by a Cantonment Authority, who is not a public servant within the meaning of section 21 of the Indian Penal Code or any person with whom the Cantonment Authority has lawfully contracted, in the execution of his duty or of anything which he is empowered or required to do by virtue or in consequence of any of the provisions of this Act or of any rule, by-law or order made thereunder, or in fulfilment of his contract, as the case may be, shall be punishable with fine which may extend to one hundred rupees.

Powers and Duties of Police Officers.

250. Any member of the police force employed in a Cantonment may, without a warrant, arrest any person committing in his view a breach of any of the provisions of this Act which are specified in Schedule IV:

Provided that—

- (a) in the case of the breach of any such provision as is specified in Part B of Schedule IV, no person shall be so arrested who consents to give his name and address, unless there is reasonable ground for doubting the accuracy of the name or address so given, the burden of proof of which shall lie on the arresting officer, and no person so arrested shall be detained after his name and address have been ascertained; and
- (b) no person shall be so arrested for an offence under section 236 except—
 - (i) at the request of the person importuned or of a military officer in whose presence the offence was committed; or
 - (ii) by or at the request of a member of the Military or Air Force Police, who is employed in the cantonment and authorized in this behalf by the Commanding Officer of the cantonment, and in whose presence the offence was committed or by or at the request of any police officer not below the rank of a sub-inspector who is employed in the cantonment and authorized in this behalf by the Commanding Officer of the cantonment.

251. It shall be the duty of all police officers to give immediate information to the Cantonment Authority of the commission of any offence against the provisions of this Act or of any rule or by-law made thereunder, and to assist all cantonment officers and servants in the exercise of their lawful authority.

Notices.

252. Where any notice, order or requisition made under this Act or any rule or by-law made thereunder requires anything to be done for the doing of which no time is fixed in this Act or in the rule or by-law, the notice, order or requisition shall specify a reasonable time for doing the same.

Authentication and validity of notices issued by Cantonment Authority.

253. Every notice, order or requisition issued by a Cantonment Authority under this Act or any rule or by-law made thereunder shall be signed—

- (a) where there is a Board, either by the President of the Board or by the Executive Officer, or, where there is no Board, by the Executive Officer ; or
- (b) by the members of any committee especially authorized by the Cantonment Authority in this behalf.

254. (1) Every notice, order or requisition issued under this Act or any rule or by-law made thereunder shall, save as otherwise expressly provided, be served or presented—

Service of notice, etc.

- (a) by giving or tendering the notice, order or requisition, or sending it by post, to the person for whom it is intended ; or
- (b) if such person cannot be found, by affixing the notice, order or requisition on some conspicuous part of his last known place of abode or business, if within the cantonment, or by giving or tendering the notice, order or requisition to some adult male member or servant of his family, or by causing it to be affixed on some conspicuous part of the building or land, if any, to which it relates.

(2) When any such notice, order or requisition is required or permitted to be served upon an owner, lessee or occupier of any building or land, it shall not be necessary to name the owner, lessee or occupier therein, and the service thereof shall, save as otherwise expressly provided, be effected either—

- (a) by giving or tendering the notice, order or requisition, or sending it by post, to the owner, lessee or occupier, or, if there are more owners, lessees or occupiers than one, on any one of them ; or
- (b) if no such owner, lessee or occupier can be found, by giving or tendering the notice, order or requisition to the authorized agent, if any, of any such owner, lessee or occupier, or to an adult male member or servant of the family of any such owner, lessee or occupier, or by causing it to be affixed on some conspicuous part of the building or land to which it relates.

(3) When the person on whom a notice, order or requisition is to be served is a minor, service upon his guardian or upon an adult male member or servant of his family shall be deemed to be service upon the minor.

255. Every notice which, by or under this Act, is to be given or served as a public notice or as a notice which is not required to be given to any individual therein specified shall, save as otherwise expressly provided, be deemed to have been sufficiently given or served if a copy thereof is affixed in such conspicuous part of the office of the Cantonment Authority,

Method of giving notice.

or in such other public place, during such period, or is published in such local newspaper or in such other manner, as the Cantonment Authority may direct.

256. In the event of non-compliance with the terms of any notice, order or requisition issued to any person under this Act, or any rule or by-law made thereunder, requiring such person to execute any work or to do any act, it shall be lawful for the Cantonment Authority, whether or not the person in default is liable to punishment for such default or has been prosecuted or sentenced to any punishment therefor, after giving notice in writing to such person, to take such action or such steps as may be necessary for the completion of the act or work required to be done or executed by him, and all the expenses incurred on such account shall be recoverable by the Cantonment Authority.

Powers of Cantonment Authority in case of non-compliance with notice, etc.

Recovery of Money.

257. (1) If any such notice as is referred to in section 256 has been given to any person in respect of property of which he is the owner, the Cantonment Authority may require any occupier of such property or of any part thereof to pay to it, instead of to the owner, any rent payable by him in respect of such property, as it falls due, up to the amount recoverable from the owner under section 256 :

Liability of occupier to pay in default of owner.

Provided that, if the occupier, on application made to him by the Cantonment Authority, refuses truly to disclose the amount of his rent or the name or address of the person to whom it is payable, the Cantonment Authority may recover from the occupier the whole amount recoverable under section 256.

(2) Any amount recovered from an occupier instead of from an owner under sub-section (1) shall, in the absence of any contract between the owner and the occupier to the contrary, be deemed to have been paid to the owner.

258. (1) Where any person, by reason of his receiving the rent of immoveable property as an agent or trustee, or of his being as an agent or trustee, the person who would receive the rent if the property were let to a tenant, would under this Act be bound to discharge any obligation imposed on the owner of the property for the discharge of which money is required, he shall not be bound to discharge the obligation unless he has, or but for his own improper act or default might have had, funds in his hands belonging to the owner sufficient for the purpose.

Relief to agents and trustees.

(2) The burden of proving any fact entitling an agent or trustee to relief under sub-section (1) shall lie upon him.

(3) Where any agent or trustee has claimed and established his right to relief under this section, the Cantonment Authority may, by notice in writing require him to apply to the discharge of such obligation as aforesaid the first monies which may come to his hands on behalf, or for the use, of the owner, and, on failure to comply with the notice, he shall be deemed to be personally liable to discharge the obligation.

259. All money recoverable by a Cantonment Authority under this Act shall, save as otherwise expressly provided, be recoverable either by suit or, on application to a Magistrate, by the distress and sale of the moveable property of the person from whom it is recoverable, and, if payable by the owner of any property as such, it shall, until it is paid, be a charge on the property.

Committees of Arbitration.

260. In the event of any disagreement as to the liability of a Cantonment Authority to pay any compensation under this Act, or as to the amount of any compensation so payable, the person claiming such compensation may apply to the Cantonment Authority for the reference of the matter to a Committee of Arbitration, and the Cantonment Authority shall forthwith proceed to convene a Committee of Arbitration to determine the matter in dispute.

261. When a Committee of Arbitration is to be convened, the Cantonment Authority shall cause a public notice to be published stating the matter to be determined, and shall forthwith send copies of the order to the District Magistrate, and to the other party concerned, and shall, as soon as may be, nominate such members of the Committee as it is entitled to nominate under section 262, and, by notice in writing, call upon the other persons who are entitled to nominate a member or members of the Committee to nominate such member or members in accordance with the provisions on that section.

Constitution of
Committee of Arbitration.

262. (1) Every Committee of Arbitration shall consist of five members, namely :—

- (a) a Chairman who shall be a person not in the service of the Government or the Cantonment Authority, and who shall be nominated by the Commanding Officer of the cantonment ;
- (b) two persons nominated by the Cantonment Authority ; and
- (c) two persons nominated by the other party concerned, who shall be persons liable to pay taxes in the cantonment and ordinarily resident therein or in the immediate vicinity thereof.

(2) If the Cantonment Authority or the other party concerned or the Commanding Officer of the cantonment fails within seven days of the date of issue of the notice referred to in section 261 to make any nomination which it or he is entitled to make or, if any member who has been so nominated neglects or refuses to act and the Cantonment Authority or other person by whom such member was nominated fails to nominate another member in his place within seven days from the date on which it or he may be called upon to do so by the District Magistrate, the District Magistrate shall forthwith appoint a member or members, as the case may be, to fill the vacancy or vacancies.

No person to be nominated who has direct interest or whose services are not immediately available.

263. (1) No person who has a direct interest in the matter under reference, or whose services are not immediately available for the purposes of the Committee, shall be nominated a member of a Committee of Arbitration.

(2) If, in the opinion of the District Magistrate, any person who has been nominated has a direct interest in the matter under reference, or is otherwise disqualified for nomination or if the services of any such person are not immediately available as aforesaid, and if the Cantonment Authority or other person by whom any such person was nominated fails to nominate another member within seven days from the date on which it or he may be called upon to do so by the District Magistrate, such failure shall be deemed to constitute a failure to make a nomination within the meaning of section 262.

Meetings and powers of Committees of Arbitration.

264. (1) When a Committee of Arbitration has been duly constituted, the Cantonment Authority shall, by notice in writing, inform each of the members of the fact, and the Committee shall meet as soon as may be thereafter.

(2) The Chairman of the Committee shall fix the time and place of meetings, and shall have power to adjourn any meeting from time to time as may be necessary.

(3) The Committee shall receive and record evidence, and shall have power to administer oaths to witnesses, and, on requisition in writing signed by the Chairman of the Committee, the District Magistrate shall issue the necessary processes for the attendance of witnesses and the production of documents required by the Committee, and may enforce the said processes as if they were processes for attendance or production before himself.

Decisions of Committees of Arbitration.

265. (1) The decision of every Committee of Arbitration shall be in accordance with majority of votes taken at a meeting at which the Chairman and at least three of the other members are present.

(2) If there is not a majority of votes in favour of any proposed decision, the opinion of the Chairman shall prevail.

(3) The decision of a Committee of Arbitration shall be final and shall not be questioned in any Court.

Prosecutions.

266. Save as otherwise expressly provided in this Act, no Court shall proceed to the trial of any offence made punishable by or under this Act, other than an offence specified in

Schedule IV, except on the complaint of, or upon information received from, the Cantonment Authority concerned or a person authorized by the Cantonment Authority by a general or special order in this behalf.

267. (1) A Cantonment Authority, or any person authorized by it, by general or special order in this behalf, may, either before or after the institution of the proceedings, compound any offence made punishable by or under this Act other than an offence under Chapter XIV :

Provided that no offence shall be compoundable which is committed by failure to comply with a notice, order or requisition issued by or on behalf of the Cantonment Authority, unless and until the same has been complied with in so far as compliance is possible.

(2) Where an offence has been compounded, the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of the offence so compounded.

General Penalty Provisions.

268. Whoever, in any case in which a penalty is not expressly provided by this Act, fails to comply with any notice, order or requisition issued under any provision thereof, or otherwise contravenes any of the provisions of this Act, shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing failure or contravention, with an additional fine which may extend to twenty rupees for every day after the first during which he has persisted in the failure or contravention.

269. Where any person whom a license has been granted under this Act or any agent or servant of such person commits a breach of any of the conditions thereof, or of any bye-law made under this Act for the purpose of regulating the manner or circumstances in, or the conditions subject to, which anything permitted by such license is to be or may be done, the Cantonment Authority may, without prejudice to any other penalty which may have been incurred under this Act, by order in writing, cancel the license or suspend it for such period as it thinks fit :

Provided that no such order shall be made until an opportunity has been given to the holder of the license to show cause why it should not be made.

270. Where any person has incurred a penalty by reason of having caused any damage to the property of a Cantonment Authority, he shall be liable to make good such damage, and the amount payable in respect of the damage shall, in case of dispute, be determined by the Magistrate by whom the person incurring such penalty is convicted, and, on non-payment of such amount on demand, the same shall be recovered by distress and sale of the moveable property of such person, and the Magistrate shall issue a warrant for its recovery accordingly.

Limitation.

271. No Court shall try any person for an offence made punishable by or under this Act, after the expiry of six months from the date of the commission of the offence, unless complaint in respect of the offence has been made to a Magistrate within the six months aforesaid.

Suits.

272. No suit or prosecution shall be entertained in any Court against any Cantonment Authority or authority appointed under sub-section (2) of section 10, or against any Commanding Officer of a cantonment, or against any member of a Board, or against any officer or servant of a Cantonment Authority, for anything in good faith done, or intended to be done, under this Act or any rule or bye-law made thereunder.

273. (1) No suit shall be instituted against any Cantonment Authority or against any member of a Board, or against any officer or servant of a Cantonment Authority in respect of any act done, or purporting to have been done, in pursuance of this Act or of any rule or bye-law made thereunder, until the expiration of two months after notice in writing has been left at the office of the Cantonment Authority, and, in the case of such member, officer or servant, unless notice in writing has also been delivered to him or left at his office or place of abode, and unless such notice states explicitly the cause of action, the nature of the relief sought, the amount of compensation claimed, and the name and place of abode of the intending plaintiff, and unless the plaint contains a statement that such notice has been so delivered or left.

(2) If the Cantonment Authority, member, officer or servant has, before the suit is instituted, tendered sufficient amends to the plaintiff, the plaintiff shall not recover any sum in excess of the amount so tendered, and shall also pay all costs incurred by the defendant after such tender.

(3) No suit, such as is described in sub-section (1), shall, unless it is an action for the recovery of immoveable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises.

(4) Nothing in sub-section (1) shall be deemed to apply to a suit in which the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the institution of the suit or proceeding.

Appeals and Revision.

274. (1) Any person aggrieved by any order described in the second column of Schedule V may appeal to the authority specified in that behalf in the third column thereof.

(2) No such appeal shall be admitted if it is made after the expiry of the period specified in that behalf in the fourth column of the said Schedule.

(3) The period specified as aforesaid shall be computed in accordance with the provisions of the Indian Limitation Act, 1908, with respect IX of 1908, to the computation of periods of limitation thereunder.

275. (1) Every appeal under section 274 shall be made by petition in writing accompanied by a copy of the order appealed against.

(2) Any such petition may be presented to the authority which made the order against which the appeal is made, and that authority shall be bound to forward it to the appellate authority, and may attach thereto any report which it may desire to make by way of explanation.

276. On the admission of an appeal from an order, other than an order contained in a notice issued under clause (a) of section 137, section 140, section 176, or section 238, all proceedings to enforce the order and all prosecutions for any contravention thereof shall be held in abeyance pending the decision of the appeal, and, if the order is set aside on appeal, disobedience thereto shall not be deemed to be an offence.

277. (1) Where an appeal from an order dismissing a servant of the Cantonment Authority whose salary is not less than one hundred rupees per mensem has been disposed of by the Officer Commanding the District, the servant so dismissed may, within thirty days from the date thereof, apply for revision of the decision to the Officer Commanding-in-Chief, the Command, whose decision thereon shall be final.

(2) Where an appeal from an order made by the Cantonment Authority has been disposed of by the District Magistrate, the Cantonment Authority may, within thirty days from the date thereof, apply, through the Officer Commanding the District, to the Local Government, or to such authority as the Local Government may appoint in this behalf, for a revision of the decision.

(3) The provisions of this Chapter with respect to appeals shall apply, as far as may be, to applications for revision made under this section.

Finality of appellate orders.

278. Save as otherwise provided in section 277, every order of an appellate authority shall be final.

279. No appeal shall be decided under this chapter unless the appellant has been heard, or has had a reasonable opportunity of being heard in person or through a legal practitioner.

Right of appellant to be heard.

CHAPTER XVI.

RULES AND BYE-LAWS.

280. (1) The Governor-General in Council may, after previous publication, make rules to carry out the purposes and objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the manner in which, and the authority to which, application for permission to occupy land belonging to Government in a cantonment is to be made ;
- (b) the authority by which such permission may be granted and the conditions to be annexed to the grant of any such permission ;

- (c) the appointment, control, supervision, suspension, removal, dismissal and punishment of servants of Cantonment Authorities ;
- (d) the circumstances in which security shall be demanded from servants of Cantonment Authorities and the amount and nature of such security ;
- (e) the grant of leave, absentee or acting allowance to servants of Cantonment Authorities ;
- (f) the creation and management of Provident Funds, and the circumstances in which, and the conditions subject to which contributions thereto shall be made from cantonment funds and by servants of Cantonment Authorities ;
- (g) the keeping of accounts by Cantonment Authorities and the manner in which such accounts shall be audited and published ;
- (h) the definition of the persons by whom, and the manner in which, money may be paid out of a cantonment fund ;
- (i) the preparation of estimates of income and expenditure by Cantonment Authorities and the definition of the persons by whom, and the conditions subject to which, such estimates may be sanctioned ;
- (j) the regulation of the procedure of Committees of Arbitration ; and
- (k) the prescribing of registers, statements and forms to be used, and maintained by any authority for the purposes of this Act.

Supplemental provisions respecting rules.

281. (1) A rule under section 280 may be made either generally for all cantonments or for the whole or any part of any one or more cantonments.

(2) All rules so made shall be published in the Gazette of India and in such other manner, if any, as the Governor-General in Council may direct and, on such publication, shall have effect as if enacted in this Act.

282. Subject to the provisions of this Act and of the rules made thereunder, a Cantonment Authority may, in addition to any bye-laws which it is empowered to make by any other provision of this Act, make bye-laws to provide for all or any of the following matters in the cantonment, namely :—

Power to make bye-laws.

- (1) the registration of births, deaths and marriages, and the taking of a census ;
- (2) the enforcement of compulsory vaccination ;
- (3) the regulation of the collection and recovery of taxes, tolls and fees under this Act and the refund of taxes ;
- (4) the regulation or prohibition of any description of traffic in the streets ;
- (5) the manner in which vehicles standing, driven, led or propelled in the streets between sunset and sunrise shall be lighted ;
- (6) the seizure and confiscation of ownerless animals straying within the limits of the cantonment

- (7) the prevention and extinction of fire ;
- (8) the construction of scaffolding for building operation to secure the safety of the general public and of persons working thereon ;
- (9) the regulation in any manner not specifically provided for in this Act of the construction, alteration, maintenance, preservation, cleaning and repairs of drains, ventilation-shafts, pipes, water-closets, privies, latrines, urinals, cesspools and other drainage works ;
- (10) the regulation or prohibition of the discharge into, or deposit in, drains of sewage, polluted water and other offensive or obstructive matter ,
- (11) the regulation or prohibition of the stabling or herding of animals, or of any class of animals, so as to prevent danger to public health ;
- (12) the proper disposal of corpses, the regulation and management of burial and burning places and other places for the disposal of corpses, and the fees chargeable for the use of such places where the same are provided or maintained by Government or at the expense of the cantonment fund ,
- (13) the permission, regulation or prohibition of the use or occupation of any street or place by itinerant vendors or by any person for the sale of articles or the exercise of any calling or the setting up of any booth or stall, and the fees chargeable for such use or occupation ;
- (14) the regulation and control of encamping grounds, pounds, washing-places, serais, hotels, dak-bungalows, lodging-houses, boarding-houses, buildings let in tenements, residential clubs, restaurants, eating-houses, cafes, refreshment-rooms and places of public recreation, entertainment or resort ;
- (15) the regulation of the ventilation, lighting, cleansing, drainage and water-supply of the buildings used for the manufacture or sale of aerated or other potable waters and of butter, milk, sweet-meats and other articles of food or drink for human consumption ;
- (16) the matters regarding which conditions may be imposed by licenses granted under section 210 ;
- (17) the control and supervision of places where dangerous or offensive trades are carried on so as to secure cleanliness therein or to minimize any injurious, offensive or dangerous effects arising or likely to arise therefrom ;
- (18) the regulation of the erection of any enclosure, fence, tent, awning or other temporary structure of whatsoever material or nature on any land situated within the cantonment ;
- (19) the laying out of streets, and the regulation and prohibition of the erection of buildings without adequate provision being made for the laying out and location of streets ;

- (20) the regulation of the use of public parks and gardens and other public places, and the protection of avenues, trees, grass and other appurtenances of streets and other public places ;
- (21) the regulation of the grazing of animals ;
- (22) the fixing and regulation of the use of public bathing and washing places ;
- (23) the regulation of the posting of bills and advertisements, and of the position, size, shape or style of name-boards, sign-boards and sign-posts ;
- (24) the fixation of a method for the sale of articles whether by measure, weight, piece or any other method ;
- (25) the rendering necessary of licenses within the cantonment—
 - (a) for persons working as job porters for the conveyance of goods ;
 - (b) for animals or vehicles let out on hire ;
 - (c) for the proprietors or drivers of vehicles, boats or other conveyances, or of animals, kept or plying for hire ; or
 - (d) for persons impelling or carrying such vehicles or other conveyances ;
- (26) the prescribing of the fee payable for any license required under clause (25), and of the conditions subject to which such licences may be granted, revised, suspended or withdrawn ;
- (27) the regulation of the charges to be made for the services of such job porters and of the hire of such animals, vehicles or other conveyances, and for the remuneration of persons impelling or carrying such vehicles or conveyances as are referred to in clause (25) ;
- (28) the regulation or prohibition, for purposes of sanitation or the prevention of disease or the promotion of public safety or convenience, of any act which occasions or is likely to occasion a nuisance, and for the regulation or prohibition of which no provision is made elsewhere by or under this Act ;
- (29) the circumstances and the manner in which owners of buildings or land in the cantonment, who are temporarily absent from, or are not resident in, the cantonment, may be required to appoint as their agents, for all or any of the purposes of this Act or of any rule or bye-law made thereunder, persons residing within or near the cantonment ;
- (30) the prevention of the spread of infectious or contagious diseases within the cantonment ;
- (31) the segregation in, or the removal and exclusion from, the cantonment, or the destruction, of animals suffering or reasonably suspected to be suffering from any infectious or contagious disease ;
- (32) the supervision, regulation, conservation and protection from injury, contamination or trespass of sources and means of public water-supply and of appliances for the distribution of water whether within or without the limits of the cantonment ;

- (33) the manner in which connections with water-works may be constructed or maintained, and the agency which shall or may be employed for such construction and maintenance;
- (34) the regulation of all matters and things relating to the supply and use of water including the collection and recovery of charges therefor and the prevention of evasion of the same;
- (35) the maintenance of schools, and the furtherance of education generally;
- (36) the regulation or prohibition of the cutting or destruction of trees or shrubs, or of the making of excavations, or of the removal of soil or quarrying, where such regulation or prohibition appears to the Cantonment Authority to be necessary for the maintenance of a water-supply, the preservation of the soil, the prevention of landslips or of the formation of ravines or torrents, or the protection of land against erosion, or against the deposit thereon of sand, gravel or stones;
- (37) the rendering necessary of licenses for the use of premises within the cantonment as stables or cowhouses or as accommodation for sheep, goats or fowls;
- (38) the control of the use in the cantonment of mechanical whistles, sirens or trumpets; and
- (39) generally for the regulation of the administration of the cantonment under this Act.

Penalty for breach
of bye-laws.

283. Any bye-law made by a Cantonment Authority under this Act may provide that a contravention thereof shall be punishable—

- (a) with fine which may extend to one hundred rupees; or
- (b) with fine which may extend to one hundred rupees and, in the case of a continuing contravention, with an additional fine which may extend to twenty rupees for every day during which such contravention continues after conviction for the first such contravention; or
- (c) with fine which may extend to ten rupees for every day during which the contravention continues after the receipt of a notice from the Cantonment Authority by the person contravening the bye-law requiring such person to discontinue such contravention.

284. (1) Any power to make bye-laws conferred by this Act is conferred subject to the condition of the bye-laws being made after previous publication and of their not taking effect until they have been approved and confirmed by the Local Government and published in the local official Gazette.

Supplemental provisions regarding bye-laws.

(2) The Local Government in confirming a bye-law may make any change therein which appears to it to be necessary.

(3) The Local Government may, after previous publication of its intention, cancel any bye-law which it has confirmed, and thereupon the bye-law shall cease to have effect.

Rules and bye-laws to be available for inspection and purchase,

285. (1) A copy of all rules and bye-laws made under this Act shall be kept at the office of the Cantonment Authority and shall, during office hours, be open free of charge to inspection by any inhabitant of the cantonment.

(2) Copies of all such rules and bye-laws shall be kept at the office of the Cantonment Authority for sale to the public.

CHAPTER XVII.

SUPPLEMENTAL PROVISIONS.

286. The Local Government may, by notification in the local official Gazette, and subject to any conditions as to compensation or otherwise which it thinks fit to impose, extend to any area beyond a cantonment and in the vicinity thereof, with or without restriction or modification, any of the provisions of Chapters IX, X, XI, XII, XIII, XIV and XV or of any rule or bye-law made under this Act for the cantonment which relates to the subject-matter of any of those Chapters, and every enactment, rule or bye-law so extended shall thereupon apply to that area as if the area were included in the cantonment.

Extension of certain provisions of the Act and rules to places beyond cantonments.

287. (1) Paragraphs 2 and 3 of section 54, and sections 59, 107 and 123 of the Transfer of Property Act, 1882, with respect to the transfer of property by registered instrument, shall, on and from the commencement of this Act, extend to every cantonment.

Registration.

(2) Where a cantonment has not been constituted a sub-district or district for the purpose of the Indian Registration Act, 1908, under section 9 of that Act, the Registrar of the district in which the cantonment is situated shall cause a copy of such entries in Indexes Nos. I and II as relate to immoveable property within the cantonment to be forwarded to the Cantonment Authority annually or at such shorter intervals as the Local Government may prescribe.

Validity of notices and other documents.

288. No notice, order, requisition, license, permission in writing or other such document issued under this Act shall be invalid merely by reason of any defect of form.

289. A copy of any receipt, application, plan, notice, order or other document or of any entry in a register, in the possession of a Cantonment Authority shall, if duly certified by the legal keeper thereof or other person authorized by the Cantonment Authority in this behalf, be admissible in evidence of the existence of the document or entry, and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent to which, the original document or entry would, if produced, have been admissible to prove such matters.

Evidence by officer or servant of the Cantonment Authority.

290. No officer or servant of a Cantonment Authority shall, in any legal proceeding to which the Cantonment Authority is not a party, be required to produce any register or document the contents of which

can be proved under section 289 by a certified copy, or to appear as a witness to prove any matter or transaction recorded therein save by order of the Court made for special cause.

IV of 1889.

291. For the purposes of the Government Buildings Act, 1899, cantonment and Cantonment Authorities shall be deemed to be municipalities and municipal authorities respectively.

Application of Act
IV of 1899.

292. The enactments mentioned in Schedule VI are repealed to the extent specified in the fourth column thereof :

Repeals.

Provided that licenses and permits given under the Cantonment Act, 1910, and in force at the commencement of this Act, shall be deemed to have been given under this Act.

XV of 1910.

SCHEDULE I.

NOTICE OF DEMAND.

(See Section 91.)

To _____ residing _____ at _____
Take notice that the Cantonment Authority demands from _____
the sum of _____ due from _____ on account
of _____ (here describe the property, occupation, circumstance or thing in
respect of which the sum is payable) leviable under _____ for the period of
_____ commencing on the _____ day of _____ 19 _____, and
ending on the _____ day of 19 _____, and that if, within thirty days from the
service of this notice, the said sum is not paid to the Cantonment Authority at
_____, or sufficient cause for non-payment is not shown to
the satisfaction of the Executive Officer, a warrant of distress will be issued for the
recovery of the same with costs.

Dated this _____ day of _____ 19 _____.

(Signed)

Executive Officer,
Cantonment.

SCHEDULE II.

FORM OF WARRANT.

(See Section 92.)

(Here insert the name of the officer charged with the execution of the warrant.)-

Whereas A.B. of _____ has not paid, and has not shown satisfactory cause for the non-payment of, the sum of _____ due on account of _____ for the period of _____ commencing on the _____ day of _____ 19 _____, and ending with the _____ day of _____ 19 _____, which sum is leviable under _____ ;

And whereas thirty days have elapsed since the service on him of notice of demand for the same ;

This is to command you to distrain, subject to the provisions of the Cantonments Act, 192 _____, the moveable property of the said A.B. to the amount of the said sum of Rs. _____ and forthwith to certify to me, together with this warrant, all particulars of the property seized by you thereunder.

Dated this _____ day of _____ 19 _____.

(Signed)

Executive Officer,
Cantonment.

* Here describe the liability.

SCHEDULE III.

FORM OF INVENTORY OF PROPERTY DISTRAINED AND NOTICE OF SALE.

(See Section 92.)

To _____ residing
at _____

Take notice that I have this day seized the property specified in the inventory annexed hereto, for the value of _____ due for the liability * mentioned in the margin for the period commencing with the _____ day of _____ 19 _____, and ending with the _____ day of _____ 19 _____,

_____ together with Rs. _____ due for service of notice of demand, and that, unless within seven days from the date of the service of this notice you pay to the Cantonment Authority the said amount, together with the costs of recovery, the said property will be sold by public auction.

Dated this _____ day of _____ 19 _____.

(Signature of officer executing the warrant.)

INVENTORY.

(Here state particulars of property seized.)

SCHEDULE IV.

CASES IN WHICH POLICE MAY ARREST WITHOUT WARRANT.

(See Section 250.)

Section.	Subject.
(1)	(2)

PART A.

118 (1) (a) (i)	... Drunkenness, etc.
167 ...	... Making or selling of food, etc., or washing of clothes, by infected person.

PART B.

118 (1) (a) (ii)	... Using threatening or abusive words, etc.
118 (1) (a) (iii)	... Indecent exposure of person, etc.
118 (1) (a) (iv)	... Begging.
118 (1) (a) (v)	... Exposing deformity, etc.
118 (1) (a) (vi)	... Gaming.
118 (1) (a) (vii)	... Destroying notice, etc.
118 (1) (a) (viii)	... Breaking direction-post, etc.
118 (1) (f)	... Keeping common gaming-house, etc.
118 (1) (g)	... Beating drum, etc.
118 (1) (h)	... Singing, etc., so as to disturb public peace or order.
119 (6) ...	... Letting loose, or setting on, ferocious dog.
125 ...	... Discharging fire-arms, etc., so as to cause danger.
176 (1) ...	... Remaining in, or re-entering, cantonment after notice of expulsion for failure to attend hospital or dispensary.
193 (2) ...	... Destroying, etc., name of street or number affixed to building.
214 ...	... Feeding animal on filth, etc.
236 ...	... Loitering, or importuning for sexual immorality.
240 (a) ...	... Remaining in, or returning to, a cantonment after notice of expulsion.

* Here describe the liability.

SCHEDULE V.

APPEALS FROM ORDERS.

(See Section 274.)

Section. (1).	Executive order. (2)	Appellate Authority (3)	Time allowed for appeal. (4)
126	Cantonment Authority's notice to repair, protect or enclose a building, wall or anything affixed thereto, or well, tank, reservoir, pool, depression or excavation.	Officer Commanding the District.	Thirty days from service of notice.
134	Cantonment Authority's notice to fill up well, tank, etc., or to drain off or remove water.	Do.	Do.
137	Cantonment Authority's notice to provide sufficient drainage, etc.	Do.	Fifteen days from service of notice.
140	Cantonment Authority's notice requiring a building to be repaired or altered so as to remove sanitary defects.	Do.	Thirty days from service of notice.
176	Order of Commanding Officer of cantonment, on report of Medical Officer, directing a person to remove from the cantonment and prohibiting him from re-entering it without permission.	Do.	Do.
181	Cantonment Authority's refusal to sanction the erection or re-erection of a building.	Do.	Thirty days from date of refusal.
185	Cantonment Authority's notice to alter or demolish a building.	Do.	Thirty days from service of notice.
188	Cantonment Authority's notice to pull down or otherwise deal with a building newly erected or re-built without permission over a sewer, drain, culvert, water-course or water-pipe.	Do.	Do.
206	Cantonment Authority's notice prohibiting or restricting the use of a slaughter-house.	Do.	Twenty-one days from service of notice.
238	Magistrate's notice directing disorderly person to remove from cantonment and prohibiting him from re-entering it without permission.	District Magistrate.	Thirty days from service of notice.

SCHEDULE VI

ENACTMENTS REPEALED.

(See Section 292.)

Year.	No.	Extent of repeal.	Short title.
1910	XV	The Cantonments Act, 1910.	So much as has not been repealed.
1914	X	The Repealing and Amending Act, 1914.	So much of the First and Second Schedules as relates to the Cantonments Act, 1910.
1919	XVIII	The Repealing and Amending Act, 1919.	So much of the First Schedule as relates to the Cantonments Act, 1910.
1919	XXII	The Cantonments (Amendment) Act, 1919.	The whole.

Cantonments (House-Accommodation) Act, 1923.

(ACT VI OF 1923.)

[Passed on the 5th March, 1923.]

An Act further to amend and to consolidate the law relating to the provision of house-accommodation for military officers in cantonments.

WHEREAS it is expedient further to amend and to consolidate the law relating to the provision of house-accommodation for military officers in cantonments; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called the Cantonments (House-Accommodation) Act, 1923.

(2) It extends to the whole of British India (inclusive of British Baluchistan) except Aden.

(3) It shall come into force on the first day of April, 1923, but it shall not become operative in any cantonment or part of a cantonment until the issue, or otherwise than in pursuance, of a notification as hereinafter provided by section 3 :

Provided that any notification made under section 3 of the Cantonments (House-Accommodation) Act, 1902, which is in force at the commencement of this Act, shall be deemed to be a notification made under section 3 of this Act.

Definitions.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

- (a) "Brigade area" means one of the Brigade areas, whether occupied by a brigade or not, into which India is for military purposes for the time being divided, and includes any area which the Governor General in Council may, by

notification in the Gazette of India, declare to be a Brigade area for all or any of the purposes of this Act ;

- (b) "Cantonment Authority" means a Cantonment Committee, or, in the case of a cantonment for which such a Committee has not been constituted or has ceased to exist or cannot be convened, the Commanding Officer of the cantonment ;
- (c) "Command" means one of the Commands into which India is for military purposes for the time being divided, and includes any area which the Governor General in Council may, by notification in the Gazette of India, declare to be a Command for all or any of the purposes of this Act ;
- (d) "Commanding Officer of the cantonment" means the officer for the time being in command of the forces in a cantonment ;
- (e) "District" means one of the Districts into which India is for military purposes for the time being divided ; it includes a Brigade area which does not form part of any such District and any area which the Governor General in Council may, by notification in the Gazette of India, declare to be a District for all or any of the purposes of this Act ;
- (f) "house" means a house suitable for occupation by a military officer or a military mess, and includes the land and buildings appurtenant to a house ;
- (g) "military officer" means a commissioned or warrant officer of His Majesty's military or air forces on military or air-force duty in a cantonment, and includes a Chaplain on duty with troops in a cantonment, a Cantonment Magistrate and any person in Army departmental employment whom the Officer Commanding the District may at any time, by an order in writing, place on the same footing as a military officer for the purposes of this Act ;
- (h) "owner" includes the person who is receiving, or is entitled to receive, the rent of a house, whether on his own account or on behalf of himself and others or as an agent or trustee, or who would so receive the rent, or be entitled to receive it, if the house were let to a tenant ; and
- (i) a house is said to be in a state of reasonable repair when—
 - (i) all floors, walls, pillars and arches are sound and all roofs sound and watertight,
 - (ii) all doors and windows are intact, properly painted or oiled, and provided with proper locks or bolts or other secure fastenings, and
 - (iii) all rooms, out-houses, and other appurtenant buildings are properly colour-washed or white-washed.

(2) If any question arises whether any land or building is appurtenant to a house, it shall be decided by the Commanding Officer of the cantonment, whose decision thereon shall, subject to revision by the District Magistrate, be final.

CHAPTER II.

APPLICATION OF ACT.

3. (1) The Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, declare this Act to be operative in any cantonment or part of a cantonment situate in the Province, other than a cantonment situate within the limits of a presidency-town.

(2) Before issuing a notification under sub-section (1) in respect of any cantonment or part of a cantonment, the local Government shall cause local inquiry to be made with a view to determining whether it is expedient to issue such notification, and what portion (if any) of the area proposed to be included therein should be excluded therefrom.

4. Nothing in this Act shall affect the provisions of any written instrument executed by or on behalf of the East India Company or the Government, unless the other party entitled and the Secretary of State for India in Council consent in writing to be bound by the terms of this Act.

CHAPTER III.

APPROPRIATION OF HOUSES.

5. Every house situate in a cantonment or part of a cantonment, in respect of which a notification under sub-section (1) of section 3 is for the time being in force shall be liable to appropriation by the Government on a lease in the manner and subject to the conditions hereinafter provided.

6. (1) Where the Commanding Officer of the cantonment considers that the liability imposed by section 5 should be enforced in respect of any house, he shall serve a notice on the owner of the house requiring him to permit the house to be inspected, measured and surveyed by such person and on such day, not being less than three days from the service of the notice, and at such time as may be specified in the notice.

(2) On the day and at the time so specified, the owner shall be bound to afford all reasonable facilities to the person specified in the notice for the purpose of the inspection, measurement and survey of the house, and, if he refuses or neglects to do so, the said person may, subject to rules made under this Act, enter on the premises and do all such things as may be reasonably necessary for the said purpose.

7. (1) If, on the report of such person as aforesaid, the Commanding Officer of the cantonment is satisfied that the house is suitable for occupation by a military officer or a military mess, he may, with the previous sanction of the Officer Commanding the District, by notice—

(a) require the owner to execute a lease of the house to the Government for a specified period which shall not be less than five years :

Cants. (House Accom.) CANTONMENTS (HOUSE ACCOMMODATION.) S. 7

- (b) require the existing occupier, if any, to vacate the house ; and
- (c) require the owner to execute within such time as may be specified in the notice such repairs as may, in the opinion of the Commanding Officer of the cantonment, be necessary for the purpose of putting the house into a state of reasonable repair.

(2) Every notice issued under sub-section (1) shall state the amount of the annual rent proposed as reasonable for the house, calculated on the assumption that the owner will carry out the required repairs, if any. It shall also contain an estimate of the cost of such repairs,

(3) The following shall be deemed to be conditions of every lease executed under sub-section (1), namely—

- (a) that the house shall, on the expiration of the lease, be re-delivered to the owner in a state of reasonable repair, and
- (b) that the grounds and the garden, if any, appertaining to the house, shall be maintained in the condition in which they are at the time at which the lease is executed.

Procedure to be observed before taking a house on lease.

8. The Officer Commanding the District shall not sanction the issue of any notice under section 7 unless he is satisfied—

- (i) that the house in respect of which it is proposed to issue the notice is suitable for occupation by a military officer or a military mess, and
- (ii) that there is not in the cantonment, or, if this Act is in force in a part only of the cantonment, then in that part thereof, a sufficient number of houses already available and suitable for occupation by military officers or military messes whose accommodation in the cantonment, or a part thereof, as the case may be, is in his opinion necessary or expedient.

9. No house in any cantonment or part of a cantonment in which this Act is operative shall, unless it was so occupied at the date of issue of the notification declaring this Act or the Cantonments (House-Accommodation) Act, 1902, as the case may be, to be operative, be occupied for the purposes of a hospital, school, school-hostel,

II of 1902.

Sanction to be obtained before a house is occupied as a hospital, etc.

bank, hotel, or shop, or by a railway administration, a company or firm engaged in trade or business or a club, without the previous sanction of the Officer Commanding the District given with the concurrence of the Commissioner or, in a province where there are no Commissioners, of the Collector.

Houses not to be appropriated in certain cases.

10. No notice shall be issued under section 7 if the house—

- (a) was, at the date of the issue of the notification declaring this Act or the Cantonments (House-Accommodation) Act, 1902, as the case may be, to be operative in the cantonment or part of the cantonment, or is, with such sanction as is required by section 9, occupied as a hospital, school,

II of 1902.

school hostel, bank, hotel or shop, and has been so occupied continuously during the three years immediately preceding the time when the occasion for issuing the notice arises, or

- (b) was, at the date of such a notification as is referred to in clause (a), or is, with such sanction as aforesaid, occupied by a railway administration or by a company or firm engaged in trade or business or by a club, or
- (c) is occupied by the owner, or
- (d) has been appropriated by the Local Government with the concurrence of the Officer Commanding the District, or by the Governor-General in Council, for use as a public office or for any other purpose.

Time to be allowed for giving possession of house.

11. (1) If a house is unoccupied, a notice issued under section 7 may require the owner to give possession of the same to the Commanding Officer of the cantonment within twenty-one days from the service of the notice.

(2) If a house is occupied, a notice issued under section 7 shall not require its vacation in less than thirty days from the service of the notice.

(3) Where a notice has been issued under section 7 and the house has been vacated in pursuance thereof, the lease shall be deemed to have commenced on the date on which the house was so vacated.

12. If the owner fails to give possession of a house to the Commanding Officer of the cantonment in pursuance of a notice issued under section 7, or if the existing occupier fails to vacate a house in pursuance of such a notice, the District Magistrate, by himself or by another person generally or specially authorized by him in this behalf, shall enter on the premises and enforce the surrender of the house.

Surrender of house when to be enforced.

Option in certain cases for owner on whom notice is issued under section 7 to call upon the Government to purchase.

13. (1) If a house, in respect of which a notice is issued under section 7, is shown to the satisfaction of the Local Government, or is proved by a decree or order of a Court of competent jurisdiction, to have been erected—

- (a) under any conditions, rules, regulations or orders which were in force in Bengal prior to the eighth day of December, 1864, and conferred on the owner the option of offering the house for sale to the military officer applying for its appropriation for his occupation or to the East India Company or the Government, or
- (b) under any conditions, rules, regulations or orders which were in force in Bombay prior to the first day of June, 1875, and conferred such an option as is described in clause (a),

then the owner shall have the option of either complying with the notice or offering the house for sale to the Government.

(2) If the owner elects to sell the house, and the Government is willing to purchase it, the question of the amount of the purchase-money to be paid shall, in the event of disagreement, be referred to a Committee of Arbitration.

14. (1) If a house, in respect of which a notice is issued under section 7, is occupied by a tenant holding in good faith and for valuable consideration under a registered lease for any term exceeding one year, the Secretary of State for India in Council shall, for the term of one year from the date on which the house is vacated in pursuance of the notice, or for the unexpired term of the lease whichever is the shorter, be liable to the owner for the rent fixed by the registered lease instead of for the rent payable under this Act if the rent so fixed exceeds the rent so payable.

Provision where house is held on long lease by a tenant.

(2) If a house, in respect of which a notice is issued under section 7, is occupied by a tenant holding in good faith and for valuable consideration under a registered lease from year to year, the Secretary of State for India in Council shall be liable as aforesaid for the term of six months from the date on which the house is vacated in pursuance of the notice.

(3) Nothing in this section shall be deemed—

(a) to render the said Secretary of State in Council so liable unless an application in writing in this behalf is made by the owner to the Commanding Officer of the cantonment within fifteen days from the service of the notice ; or

(b) to limit or otherwise affect any agreement between the said Secretary of State in Council and the owner.

15. (1) If the owner considers that the rent stated in a notice issued under section 7 is not reasonable, he may, within a period of fifteen days from the service of such notice, require that the matter be referred by the Commanding Officer of the cantonment to a Committee of Arbitration.

Power for owner to require reference to arbitration on question of rent.

(2) If the owner does not make such a requisition within the said period, he shall be deemed to have accepted the rent so offered.

16. (1) If the owner fails to execute any repairs to a house as required by a notice issued to him under section 7, the Commanding Officer of the cantonment may by notice require the owner to execute the repairs within such period, not being less than fifteen days, as may be specified in the notice.

Power for owner to require reference to arbitration on question of repairs.

(2) If the owner objects to any requisition contained in a notice issued under sub-section (1), he may, within fifteen days from the service of the notice, require that the matter be referred by the Commanding Officer of the cantonment to a Committee of Arbitration.

Power to have
repairs executed and
recover cost.

17. Where—

- (a) the owner fails to comply with a notice issued under sub-section (1) of section 16 and has not, within fifteen days from the service of such notice, required that the matter be referred to a Committee of Arbitration, or
- (b) a Committee of Arbitration decides that repairs are necessary and the extent to which they are necessary, and specifies the period within which they are to be executed, and the owner fails to execute them within such period, and has not within one month from the date of the decision appealed therefrom to the Civil Court as hereinafter provided, or
- (c) The owner fails to execute within such period as may be specified by the Civil Court hearing such appeal such repairs as the Court may decide to be necessary,

the Military Works Services or the Public Works Department shall, on the application of the Commanding Officer of the cantonment, cause the repairs specified in the notice or, if the matter has been referred to a Committee of Arbitration, in the decision of the Committee or the Civil Court, as the case may be, to be executed at the expense of the Government, and the cost thereof may be deducted from the rent payable to the owner.

18. Every person on whom devolves, by transfer, by succession or by operation of law, the interest of an owner in any

Notice to be given
of devolution of
interest in house in
cantonment.

house, or in any part of any house, situate in a cantonment or part of a cantonment in respect of which a notification under sub-section (1) of section 3 is for the time being in force, shall be bound to give notice of the

fact to the Commanding Officer of the cantonment within one month from the date of such devolution, and if he, without reasonable cause, fails to do so, he shall be punishable with fine which may extend to fifty rupees.

CHAPTER IV.

COMMITTEES OF ARBITRATION.

Convening of
Committees of
Arbitration in cases
falling under sub-
section (2) of sec-
tion 13.

19. In the event of any disagreement as to the amount of the purchase-money of a house to be sold under sub-section (2) of section 13, the Commanding Officer of the cantonment shall forthwith proceed to convene a Committee of Arbitration to determine it.

Convening of
Committees of
Arbitration on re-
quisition of owners.

20. Where a requisition is made to the Commanding Officer of the cantonment by an owner under section 15 or section 16, the Commanding Officer of the cantonment shall forthwith proceed to convene a Committee of Arbitration—

- (a) to determine the amount of the rent to be paid, or
- (b) to determine whether any, and (if any) what, repairs are necessary, the extent to which they are necessary, and the period within which they are to be executed, or
- (c) otherwise to determine the question in dispute.

Procedure for convening Committees of Arbitration generally.

21. (1) Where a Committee of Arbitration is to be convened, the Commanding Officer of the cantonment shall forthwith cause an order to be published in Station Orders stating the matter to be determined.

(2) The Commanding Officer of the cantonment shall forthwith send a copy of such order to the District Magistrate and to the parties concerned, and, as soon as may be, shall by notice call upon the owner concerned to make, and shall himself make, nominations in accordance with the provisions of sections 22 and 23.

Constitution of Committee of Arbitration.

22. (1) Every Committee of Arbitration shall consist of five members, namely :—

- (a) two members nominated by the Commanding Officer of the cantonment, one of whom shall, if possible, be an officer of the Military Works Services or of the Public Works Department ;
- (b) two members nominated by the owner concerned, who shall be persons liable to pay taxes in the cantonment and ordinarily resident therein or in the immediate vicinity thereof ; and
- (c) a chairman who shall be person not in the service of the Government or the Cantonment Authority and not having any interest in house-property in the Cantonment, which has been appropriated or is liable to appropriation under this Act, and who shall be nominated by the Commanding Officer of the cantonment.

(2) If the Commanding Officer of the cantonment or the owner concerned fails without reasonable cause to nominate, within seven days from the date on which the owner has been called upon to make nominations under section 21, any member whom he is entitled to nominate under sub-section (1), or if any member who has been nominated neglects or refuses to act and the person by whom such member was nominated fails to nominate another member in his place within seven days from the date on which he may be called upon to do so by the District Magistrate, the District Magistrate shall forthwith appoint a member or members to fill the vacancy or vacancies.

Members of Committees of Arbitration to be persons who have no direct interest and whose services are immediately available.

23. (1) No person who has a direct interest in the matter under reference or whose services are not immediately available for the purposes of the Committee shall be nominated a member of a Committee of Arbitration.

(2) If, in the opinion of the District Magistrate, any person who has been nominated has a direct interest in the matter under reference, or is otherwise disqualified for nomination, or if the services of any such person are not immediately available as aforesaid, and if the person by whom any such person was nominated fails to nominate another member within seven days from the date on which he may be called upon to do so by the District Magistrate, such failure shall be deemed to constitute a failure to make a nomination within the meaning of section 22.

Meetings and powers of Committees of Arbitration.

24. (1) When a Committee of Arbitration has been duly constituted, the Commanding Officer of the cantonment shall by notice inform each of the members of the fact, and the Committee shall meet as soon as may be thereafter.

(2) The Committee shall receive and record evidence and shall have power to administer oaths to witnesses, and the District Magistrate, on requisition in writing signed by the Chairman of the Committee, shall issue the necessary processes for the attendance of witnesses and the production of documents required by the Committee, and may enforce the said processes as if they were processes for attendance or production before himself.

Powers of Chairman of Committee of Arbitration as to meetings.

25. The Chairman of the Committee of Arbitration shall fix the time and place of meeting, and shall have power to adjourn the meeting from time to time as may be necessary.

26. In determining the amount of the purchase-money to be paid for a house to be sold under sub-section (2) of section 13, the Committee of Arbitration shall estimate the market-value of the house at the date on which the notice was served on the owner under section 7.

Calculation of amount of purchase-money by Committees of Arbitration.

27. In determining the amount of rent to be paid for a house, the Committee of Arbitration shall estimate the market-value of the house at the date on which the notice was served on the owner under section 7, and shall fix the annual rent at such percentage on that value as is for the time being recoverable by way of annual rent on the market-value of similar houses in the cantonment:

Calculation of rent by Committees of Arbitration.

Provided that due allowance shall be made in respect of the cost to the lessee of maintaining the house in a state of reasonable repair during the period of the lease.

Decisions of Committees of Arbitration.

28. (1) The decision of every Committee of Arbitration shall be in accordance with the majority of votes taken at a meeting at which the chairman and at least three of the other members are present.

(2) If there is not a majority of votes in favour of any proposed decision, the opinion of the chairman shall prevail.

(3) Save as provided in this Act, the decision of a Committee of Arbitration shall be final and shall not be questioned in any Court.

CHAPTER V.

APPEALS.

29. (1) If the Commanding Officer of the cantonment, or the owner of a house in respect of which any matter has been referred to a Committee of Arbitration, is dissatisfied with any decision of the Committee of Arbitration, he may, within one month from the date of such decision, appeal to the

Appeal to Civil Court.

principal Civil Court having ordinary original civil jurisdiction in the cantonment, and the decision of such Court shall be final.

(2) A Civil Court hearing an appeal under this section shall, so far as may be, follow the same procedure and have the same powers as it follows and has when hearing an appeal under the Code of Civil Procedure, **V of 1908. 1908.**

30. (1) The owner or any tenant of a house in respect of which a notice has been issued under section 7 may appeal to the Officer Commanding the district or, if that officer is the Commanding Officer of the cantonment, to the General Officer Commanding-in-Chief, the Command, against the decision of the Commanding Officer of the cantonment to appropriate the house.

(2) No such appeal shall be admitted unless made within a period of twenty-one days from the service of the notice aforesaid, and such period shall be computed in accordance with the provisions of the Indian Limitation Act, 1908, with respect to the computation of periods of limitation thereunder.

IX of 1908.

31. (1) Every petition of appeal under section 30 shall be in writing and accompanied by a copy of the notice appealed against.

(2) Any such petition may be presented to the Commanding Officer of the cantonment, and that Officer shall be bound to forward it to the authority empowered by section 30 to hear the appeal, and may attach thereto any report which he may desire to make in explanation of the notice appealed against.

(3) If any such petition is presented direct to the Officer Commanding the district and an immediate order on the petition is not necessary, the Officer Commanding the district may refer the petition to the Commanding Officer of the cantonment for report.

32. The decision on any such appeal of the Officer Commanding the district or of the General Officer Commanding-in-Chief, the Command, as the case may be, shall be final, and shall not be questioned in any Court otherwise than on the ground that the house is situate in a cantonment, or part of a cantonment in which this Act is not operative:

Provided that no appeal shall be decided until the appellant has been heard or has had a reasonable opportunity of being heard in person or through a legal practitioner.

33. Where an appeal has been presented under section 30 within the period prescribed by sub-section (2) of that section, all action on the notice shall, on the application of the appellant, be held in abeyance pending the decision of the appeal.

Suspension of action pending appeal.

CHAPTER VI.

SUPPLEMENTAL PROVISIONS.

34. Every notice or requisition prescribed by the Act shall be in writing, signed by the person by whom it is given or made or by his duly appointed agent, and

Service of notice and requisitions.

may be served by post on the person to whom it is addressed, or, in the case of an owner who does not reside in or near the cantonment, on his agent appointed under the Cantonments Act, 1910, or any rule made XV of 1910, thereunder.

Power for Governor-General in Council to make rules.

35. (1) The Governor-General in Council may make rules to carry out the purposes and objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) regulate the procedure of Committees of Arbitration ; and
- (b) define the powers of entry, inspection, measurement or survey which may be exercised in carrying out the purposes and objects of this Act or of any rule made hereunder.

Further provisions respecting rules. 36. (1) The power to make rules under section 35 shall be subject to the condition of the rules being made after previous publication and of their not taking effect until they have been published in the Gazette of India and in such other manner (if any) as the Governor-General in Council may direct.

(2) Any rule under section 35 may be general for all cantonments or parts of cantonments in British India in which this Act is for the time being operative, or may be special for any of such cantonments or parts as the Governor-General in Council may direct.

(3) A copy of the rules under section 35 for the time being in force in a cantonment shall be kept open to inspection free of charge at all reasonable times in the office of the Cantonment Authority.

(4) In making any rule under clause (b) of sub-section (2) of section 35, the Governor-General in Council may direct that whoever obstructs any person, not being a public servant within the meaning of section 21 of the Indian Penal Code, in making any entry, inspection, measurement or survey, shall be punishable with fine which may extend to fifty rupees, and, in the case of a continuing offence, with fine which, in addition to such fine as aforesaid, may extend to five rupees for every day after the first during which such offence continues.

Inapplicability of section 556 of the Code of Criminal Procedure, 1898, to trials of offences. 37. No Judge or Magistrate shall be deemed, within the meaning of section 556 of the Code of Criminal Procedure, 1898, V of 1898. to be a party to, or personally interested in, any prosecution for an offence constituted by or under this Act merely because he is a member of the Cantonment Committee or has ordered or approved the prosecution.

Protection to persons acting under Act.

38. No suit or other legal proceeding shall lie against any person for anything in good faith done, or intended to be done under this Act or in pursuance of any lawful notice or order issued under this Act.

Repeals. 39. On and from the commencement of this Act, the enactments mentioned in the schedule shall be repealed to the extent specified in the fourth column thereof.

THE SCHEDULE.

(See Section 39.)

ENACTMENTS REPEALED.

Year.	Number.	Short title.	Extent of repeal.
1904	II	The Cantonments (House-Accommodation) Act, 1902.	The whole.
1909	V	The Amending (Army) Act, 1909.	So much as has not been repealed.
1914	IV	The Decentralization Act, 1914.	So much of the schedule as relates to the Cantonments (House-Accommodation) Act, 1902.

Cattle-trespass (Amendment Act), 1921.

(ACT XVII OF 1921.)

[Passed on the 30th September, 1921.]

An Act further to amend the Cattle trespass Act, 1871.

WHEREAS it is expedient further to amend the Cattle-trespass Act, 1871; It is hereby enacted as follows:—

I of 1871.

Short-title and commencement. 1. (1) This Act may be called the Cattle-trespass (Amendment) Act, 1921.

(2) This section shall come into force at once.

(3) The rest of the Act shall come into force in any Province or part thereof on such date as the Local Government may, by notification in the local official Gazette, appoint.

I of 1871.

Substitution of new section for section 12, Act I of 1871. 2. For section 12 of the Cattle-trespass Act, 1871, the following section shall be substituted, namely:—

12. For every head of cattle impounded as aforesaid, the pound-keeper shall levy a fine in accordance with the scale for the time being prescribed by the Local Government in this behalf by notification in the official Gazette. Different scales may be prescribed for different local areas.

All fines so levied shall be sent to the Magistrate of the District through such officer as the Local Government may direct.

A list of the fines and of the rates of charge for feeding and watering cattle shall be posted in a conspicuous place on or near to every pound."

I of 1891.

Repeal.

3. Section 5 of the Cattle-trespass Act (1871) Amendment Act, 1891, is hereby repealed.

Cotton Transport Act, 1923.

(ACT III OF 1923).

*[Passed on the 23rd February, 1923.]**An Act to provide for the restriction and control of the transport of cotton in certain circumstances.*

WHEREAS it is expedient for the purpose of maintaining the quality and reputation of the cotton grown in certain areas in British India to enable the restriction and control of the transport by rail and the import of cotton into those areas ; It is hereby enacted as follows :—

Short title and
extent.

1. (1) This Act may be called the Cotton Transport Act, 1923.

(2) It extends to the whole of British India.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

- (a) "certified copy", in relation to a license, means a copy of the license certified in the manner described in section 76 of the Indian Evidence Act, 1872, by the authority by which the license was granted ;
- (b) "cotton" means every kind of unmanufactured cotton, that is to say, ginned and unginned cotton, cotton waste and cotton seed ;
- (c) "cotton waste" means droppings, strippings, fly and other waste products of a cotton-mill other than yarn waste ;
- (d) "license" means a license granted under this Act ;
- (e) "notified station" means a railway station specified in a notification under section 3 ;
- (f) "prescribed" means prescribed by rules made under this Act ; and
- (g) "protected area" means an area into which the import of cotton or of any kind of cotton has been prohibited by a notification under section 3.

3. (1) The Local Government may, for the purpose of maintaining

Power to issue
notification prohibiting
import of cotton into
protected area.

the quality or reputation of the cotton grown in any area in the Province, by notification in the local official Gazette, prohibit the import of cotton or of any specified kind of cotton into that area save under, and in accordance with the conditions of, a license :

Provided that no such notification shall be deemed to prohibit the import into any protected area of packages containing any kind of cotton and not exceeding ten pounds avoirdupois weight.

(2) Any such notification may prohibit the delivery to and the taking of delivery by, any person, at any specified railway station situated in the protected area, of any cotton, the import of which into that area is prohibited when such cotton has been consigned from a railway station not situated in that area, unless such person holds a license for the import of the cotton into that area.

IX of 1890.

4. (1) Notwithstanding anything contained in the Indian Railways Act, 1890, or any other law for the time being in force, the station master of any railway station or any other railway servant responsible for the booking of goods or parcels at that station may refuse to receive for carriage at, or to forward or allow to be carried on the railway from, that station any cotton consigned to a notified station, being cotton of a kind of which the delivery at such notified station has been prohibited unless both stations are in the same protected area, or unless the consignor produces a certified copy of a license for the import of the cotton into the protected area in which such notified station is situated.

(2) Every certified copy of a license when so produced shall be attached to the invoice or way bill, as the case may be, and shall accompany the consignment to its destination, and shall there be dealt with in the prescribed manner.

(3) Where by or under any law in force in the territories of any State in India the import into any area, or the delivery at any railway station, of cotton or of any kind of cotton has been prohibited, the Governor-General in Council may, by notification in the Gazette of India, declare that the provisions of sub-section (1) shall apply in respect of cotton consigned to any such station as if such area and such station were respectively a protected area and a notified station, and as if any license granted under such law were a license granted under this Act.

5. (1) Where any cotton, the import of which into any protected area has been prohibited, has been consigned to and arrives at a notified station in any such protected area, the station master or other railway servant responsible for the receipt and delivery to the consignee of goods or parcels, as the case may be, at that station shall, unless both the notified station and the railway station from which the cotton has been consigned are situated in the same protected area, refuse to deliver the cotton until he is satisfied that the consignee holds a license for the import of the cotton into the protected area in which such notified station is situated; and, if he is not so satisfied, or if within fourteen days the consignee or some person acting on his behalf does not appear in order to take delivery shall return the cotton to the railway station from which it was consigned, together with an intimation that delivery of the cotton has been refused or has not been taken, as the case may be.

(2) Any station master or other railway servant receiving any cotton returned under sub-section (1), or returned with a like intimation from a railway station specified in a notification under sub-section (3) of section 4, shall cause to be served on the consignor in any manner authorised by section 141 of the Indian Railways Act, 1890, a notice stating that the cotton has been so returned and requiring the consignor to pay any rate, terminal or other charges due in respect of the carriage of the cotton to and from the railway station to which it was consigned, and such charges shall be deemed to be due from the consignor for all the purposes of section 55 of that Act.

IX of 1890.

6. Any person who, in contravention of the provisions of this Act or of any notification or rule made hereunder, knowingly

Penalties.

takes delivery of any cotton from a notified station or imports, or attempts to import, any cotton into a protected area, and any station master or other railway servant who, in contravention of the provisions of sub-section (1) of section 5, without reasonable excuse, the burden of proving which shall lie upon him, delivers any cotton to a consignee or other person, shall be liable to a fine not exceeding one thousand rupees, and upon any subsequent conviction to imprisonment which may extend to three months, or to fine which may extend to five thousand rupees, or to both.

Power to make rules.

7. (1) The Local Government may, by notification in the local official Gazette make rules to provide for any of the following matters, namely :—

- (a) the prevention of the import into a protected area by road, river or sea, save under and in accordance with the conditions of a license, of cotton the import of which into that area has been prohibited by a notification under section 3 ;
- (b) the terms and conditions to be contained in licenses and the authorities by which they may be granted ; and
- (c) the manner in which licenses and certified copies thereof shall be dealt with on and after the delivery of the cotton to which they relate.

(2) Any such rules may provide that any contravention thereof or of the conditions of any license, not otherwise made punishable by this Act, shall be punishable with fine which may extend to five hundred rupees.

8. No notification under section 3 or rule under section 7 shall be

Previous approval of Local Legislature to issue of notifications and rules.

issued by the Local Government of any Governor's Province, unless it has been laid in draft before the Legislative Council of the Province, and has been approved by a resolution of the Legislative Council, either with or without modification or addition but

upon such approval being given the notification or rule, as the case may be, may be issued in the form in which it has been so approved.

Protection for acts done under Act.

9. No suit or other legal proceeding shall be instituted against any person in respect of anything which is in good faith done or intended to be done under this Act.

Criminal Law Amendment Repealing Act, 1922.

(ACT V OF 1922.)

[Passed on the 22nd February, 1922.]

An Act to repeal certain provisions of the Indian Criminal Law Amendment Act, 1908.

WHEREAS it is expedient that certain provisions of the Indian Criminal Law Amendment Act, 1908, should be repealed ; It is hereby XIV of 1908. enacted as follows :—

Short title.

1. This Act may be called the Indian Criminal Law Amendment Repealing Act, 1922.

Crl. Law Amend Repealing Act. ORL. LAW AMEND. REPEALING ACT. S. 2

2. The repeal of an enactment by this Act shall have effect in every part of British India, including the Sonthal Parganas, in which the enactment was in force at the date of the commencement of this Act, and any notification, made under any law for the time being in force, whereby any such enactment has been declared to be in force, in, or applicable to, or has been extended to, any such part, shall on and from that date be deemed to have been cancelled in so far as it relates to that enactment.

3. Sub-section (3) of section 1 and the whole of Part I of, and the Schedule to, the Indian Criminal Law Amendment Act, 1908, and so much of the First Schedule to the Devolution Act, 1920, as relates to sub-section (3) of section 1 and to sub-section (1) of section 2 of the Indian Criminal Law Amendment Act, 1908, are hereby repealed.

Criminal Tribes Act, 1924.

(ACT VI OF 1924.)

[Passed on the 15th March, 1924].

An Act to consolidate the law relating to Criminal Tribes.

WHEREAS it is expedient to consolidate the law relating to criminal tribes: It is hereby enacted as follows:—

Preliminary.

Sec. 1, Act III of 1911. Short title and extent. 1. (1) This Act may be called the Criminal Tribes Act, 1924.

(2) It extends to the whole of British India.

Sec. 2, Act III of 1911. Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

Sec. 2, Act I of 1923. (1) "district" includes a Presidency town and the town of Rangoon;

(2) "District Magistrate" means, in the case of a Presidency-town or the town of Rangoon, the Commissioner of Police;

(3) "prescribed" means prescribed by rules made under this Act; and

Sec. 2, Act I of 1923. (4) "Superintendent of Police" means, in the case of a Presidency-town or the town of Rangoon, any officer appointed by the Local Government to perform the duties of a Superintendent of Police under this Act.

Notification of Criminal Tribes.

Sec. 4 (1) and (3) and Sec. 3, Act III of 1911. Power to declare any tribe, gang or class a criminal tribe. 3. If the Local Government has reason to believe that any tribe, gang or class of persons, or any part of a tribe, gang or class, is addicted to the systematic commission of non-bailable offences, it may, by notification in the local official Gazette, declare that such tribe, gang or class or, as the case may be, that such part of the tribe, gang or class is a criminal tribe for the purposes of this Act.

Registration of Members of Criminal Tribes.

Registration of members of criminal tribes. 4. The Local Government may direct the District Magistrate to make or to cause to be made a register of the members of any criminal tribe, or of a criminal tribe, within his district. Sec. 1, Act III of 1911. Secs. 3 and 12, Act I of 1923.

5. Upon receiving such direction, the District Magistrate shall publish notice in the prescribed manner at the place where the register is to be made and at such other places as he may think fit, calling upon all the members of the criminal tribe or part, as the case may be,— Sec. 5, Act III of 1911. Secs. 4 and 12, Act I of 1923.

- (a) to appear at a time and place therein specified before a person appointed by him in this behalf ;
- (b) to give to that person such information as may be necessary to enable him to make the register ; and
- (c) to allow their finger-impressions to be recorded :

Provided that the District Magistrate may exempt any member from registration and may cancel any such exemption.

6. The register, when made, shall be placed in the keeping of the Superintendent of Police, who shall, from time to time, report to the District Magistrate any alterations which ought in his opinion to be made therein, either by way of addition or erasure. Sec. 6, Act III of 1911.

7. (1) After the register has been placed in the keeping of the Superintendent of Police, no person's name shall be added to the register, and no registration shall be cancelled, except by, or under an order in writing of, the District Magistrate. Sec. 7, Act III of 1911.

(2) Before the name of any person is added to the register under this section, the Magistrate shall give notice in the prescribed manner to the person concerned.

- (a) to appear before him or an authority appointed by him in this behalf at a time and place therein specified ;
- (b) to give to him or such authority such information as may be necessary to enable the entry to be made ; and
- (c) to allow his finger-impressions to be recorded.

8. Any person deeming himself aggrieved by any entry made, or proposed to be made, in such register, either when the register is first made or subsequently, may complain to the District Magistrate against such entry, and the Magistrate shall retain such person's name on the register, or enter it therein or erase it therefrom, as he may think fit. Sec. 8 Act III of 1911.

9. The District Magistrate or any officer empowered by him in this behalf may at any time order the finger-impressions of any registered member of a criminal tribe to be taken. Sec. 9, Act III of 1911.

Sec. 10, Act III of 1911. Members of criminal tribes to report themselves or notify residence.
Act XI, 1915.

10. The Local Government may, by notification in the local official Gazette, issue in respect of any criminal tribe either or both of the following directions, namely, that every registered member thereof shall, in the prescribed manner,

- (a) report himself at fixed intervals ;
- (b) notify his place of residence and any change or intended change of residence, and any absence or intended absence, from his residence.

Restriction of Movements of Criminal Tribes.

Sec. 2 and Sch. I, Act XXXVIII of 1930. Power to restrict movements of, or settle criminal tribes.

11. (1) If the Local Government considers that it is expedient that any criminal tribe, or any part or member of a criminal tribe, should be—

Sec. 12, Act I of 1923.

- (a) restricted in its or his movements to any specified area, or
- (b) settled in any place of residence, the Local Government may, by notification in the local official Gazette, declare that such criminal tribe, part or member, as the case may be, shall be restricted in its or his movements to the area specified in the notification, or shall be settled in the place of residence so specified as the case may be.

(2) Before making any such declaration, the Local Government shall consider the following matters, namely :—

- (i) the nature and the circumstances of the offences in which the members of the criminal tribe or part or the individual member, as the case may be, are or is believed to have been concerned ;
- (ii) whether the criminal tribe, part or member follows any lawful occupation, and whether such occupation is a real occupation or merely a pretence for the purpose of facilitating the commission of crimes ;
- (iii) the suitability of the restriction area, or of the place of residence, as the case may be, which it is proposed to specify in the notification ; and
- (iv) the manner in which it is proposed that the persons to be restricted or settled shall earn their living within the restriction area or in the place of residence, and the adequacy of the arrangements which are proposed therefor.

Sec. 13, Act III of 1911.

12. The Local Government may by a like notification vary the terms of any notification issued by it under section 11 for the purpose of specifying another restriction, area or another place of residence, as the case may be, and any officer empowered in this behalf by the Local Government may, by order in writing, vary any notification made under section 11 or under this section for the purpose of specifying another restriction area, or as the case may be, another place of residence, in the same district.

Secs. 5 and 12, Act I of 1923.

13. Any notification made by the Local Government under section 11 Secs. 6 and 12, Act I of 1928.

Power of Local Government to restrict or settle criminal tribe in another province.

or section 12 may specify, as the restriction area or as the place of residence, an area or place situated in any other province, provided that the consent of the Local Government of that province shall first have been obtained.

Verification of presence of members of tribe within prescribed area or place of residence.

14 Every registered member of a criminal tribe, Sec. 14, Act III of 1911, whose movements have been restricted or who has been settled in a place of residence in pursuance of any notification under section 11 or section 12, shall attend at such place and at such time and before such person as may be prescribed in this behalf.

15. (1) Where, in pursuance of any such notification, any member of a criminal tribe is restricted in his movements to an area, or is settled in a place of residence, situated in a province other than that by the Local Government of which the notification under section 3 relating to the criminal tribe was issued, all the provisions of this Act and the rules made thereunder shall apply to him as if the notification under section 3 had been issued by the Local Government of such other province.

Application of Act when criminal tribe is transferred from one province or district to another.

(2) If any criminal tribe, or any part of a criminal tribe, which has been registered under section 4 in any district, or any member of such tribe or part, is restricted in its or his movements to an area, or is settled in a place of residence, situated in another district (whether in the same province or not, the register or, as the case may be, the relevant entries or entry therein shall be transferred to the Superintendent of Police of the last-mentioned district, and all the provisions of this Act and the rules made thereunder shall apply as if the criminal tribe or part had been registered in that district, and the District Magistrate of that district shall have power to cancel any exemption granted under section 5.

Settlements and Schools.

16. The Local Government may establish industrial, agricultural or reformatory settlements and may order to be placed in any such settlement any criminal tribe, or any part or member of a criminal tribe, in respect of which or of whom a notification has been issued under section 11 : Secs. 16, Act III of 1911.

Power to place tribe in settlement.

Provided that no such order shall be made unless the necessity for making it has been established to the satisfaction of the Local Government, after an inquiry held by such authority and in such manner as may be prescribed. Secs. 8 and 12, Act I of 1923.

17. (1) The Local Government may establish industrial, agricultural or reformatory schools for children, and may order to be separated and removed from their parents or guardians and to be placed in any such school or schools the children of members of any criminal tribe or part of a criminal tribe, in respect of which a notification has been issued under section 11. Sec. 17, Act III of 1911. Sec. 12, Act I of 1923.

Power to place children in schools and to apprentice them.

(2) For every school established under sub-section (1), a Superintendent shall be appointed by the Local Government.

VIII of 1897.

(3) The provisions of sections 18 to 22 of the Reformatory Schools Act, 1897, shall, so far as may be, apply in the case of every school for children established under this section as if the Superintendent of such school were a Superintendent and the children placed in such school were youthful offenders within the meaning of that Act.

(4) For the purposes of this section the term "children" includes all persons under the age of eighteen and above the age of six years.

(5) The decision of the District Magistrate as to the age of any person for the purposes of this section shall be final.

Sec. 18, Act
III of 1911.
Sec. 9, Act I
of 1928.

Power to discharge or transfer persons from settlement or school.

18. The Local Government or any officer authorized by it in this behalf may at any time, by general or special order, direct any person who may be in any industrial, agricultural or reformatory settlement or school in the province—

(a) to be discharged, or

(b) to be transferred to some other settlement or school in the province.

Sec. 19, Act
III of 1911.
Sch. I, Act
XXXVIII of
1920.

Power to direct use of any settlement or school in British India for reception of persons.

19. Any order made under section 16, section 17 or section 18 may specify as the settlement or school in which any person is to be placed or to which he is to be transferred, as the case may be, any industrial, agricultural or reformatory settlement or school in any other province, provided that the consent of the Local Government of that province shall first have been obtained.

Rules.

Sec. 20, Act
III of 1911.

Power to make rules.

20. (1) The Local Government may make rules to carry out the purposes and objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for or regulate—

(a) the form and contents of the register referred to in section 4 ;

(b) the manner in which the notice referred to in section 5 shall be published and the means by which the persons whom it concerns, and the village-headmen, village-watchmen and land-owners and occupiers of the village in which such persons reside, and the agents of such land-owners or occupiers, shall be informed of its publication ;

(c) the addition of names to the register and the erasure of names therein, and the mode in which the notice referred to in sub-section (2) of section 7 shall be given ;

(d) the manner in which persons mentioned in section 10 shall report themselves, or notify their residence or any change or intended change of residence, or any absence or intended absence ;

(e) the nature of the restrictions to be observed by persons whose movements have been restricted by notifications under section 11 or section 12 ;

- (f) the circumstances in which members of a criminal tribe shall be required to possess and produce for inspection certificates of indentify, and the manner in which such certificates shall be granted ; Sec. 10, Act I of 1923.
- (g) the conditions as to holding passes under which persons may be permitted to leave the place in which they are settled or confined, or the area to which their movements are restricted :
- (h) the conditions to be inserted in any such pass in regard to—
- (i) the places where the holder of the pass may go or reside ;
 - (ii) the persons before whom, from time to time, he shall be bound to present himself ; and
 - (iii) the time during which he may absent himself ;
- (i) the place and time at which, and the persons before whom, members of a criminal tribe shall attend in accordance with the provisions of section 14 ,
- (j) the authority by whom and the manner in which the inquiry referred to in section 16 shall be held ; Sec. 10, Act I of 1923.
- (k) the inspection of the residences and villages of any criminal tribe ;
- (l) the terms upon which registered members of criminal tribes may be discharged from the operation of this Act ;
- (m) the management, control and supervision of industrial, agricultural or reformatory settlements and schools ;
- (n) the works on which, and the hours during which, persons placed in an industrial, agricultural or reformatory settlement shall be employed, the rate at which they shall be paid, and the disposal, for the benefit of such persons, of the surplus proceeds of their labour ; and
- (o) the discipline to which persons endeavouring to escape from any industrial, agricultural or reformatory settlement or school, or otherwise offending against the rules for the time being in force, shall be subject, the periodical visitation of such settlement or school and the removal from it of such persons as it shall seem expedient to remove.

Penalties and Procedure.

Penalties for failure to comply with terms of notice under section 5 or section 7.

21. Whoever, being a member of a criminal tribe, without lawful excuse, the burden of proving which shall lie upon him,— Sec. 21, Act III of 1911.

- (a) fails to appear in compliance with a notice issued under section 5 or section 7, or
- (b) intentionally omits to furnish any information required under either of these sections, or
- (c) when required to furnish information under either of those sections, furnishes as true any information which he knows or has reason to believe to be false, or

(d) refuses to allow his finger-impressions to be taken by any person acting under an order passed under section 9, may be arrested without warrant, and shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Sec. 22, Act III of 1911. **22.** (1) Whoever, being a registered member of a criminal tribe contravenes a rule made under clause (e), clause (g) or clause (h) of section 20 shall be punishable with imprisonment for a term which may extend,—
 Sec. 11, Act I of 1923. **Penalties for breach of rules.**

- (a) on a first conviction, to one year,
 - (b) on a second conviction, to two years, and
 - (c) on any subsequent conviction, to three years,
- or with fine which may extend to five hundred rupees, or with both.

(2) Whoever, being a registered member of a criminal tribe, contravenes any other rule made under section 20 shall be punishable,—

- (a) on a first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both ; and
- (b) on any subsequent conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

Sec. 11, Act I of 1923. **(3)** Any person who commits or is reasonably suspected of having committed an offence made punishable by this section which is not a cognizable offence as defined in the Code of Criminal Procedure, 1898, may be arrested without a warrant by any officer in charge of a police-station or by any police-officer not below the rank of a sub-inspector.

Sec. 23, Act III of 1911. **23.** (1) Whoever, being a member of any criminal tribe and having been convicted of any of the offences under the Indian Penal Code specified in Schedule I, is convicted of the same or of any other such offence shall, in the absence of special reasons to the contrary which shall be stated in the judgment of the Court, be punished,—
 XLV of 1860. **Enhanced punishment for certain offences by members of criminal tribe after previous conviction.**

- (a) on a second conviction, with imprisonment for a term of not less than seven years, and
- (b) on a third or any subsequent conviction, with transportation for life :

Provided that not more than one of any such convictions which may have occurred before the 1st day of March, 1911, shall be taken into account for the purposes of this sub-section.

(2) Nothing in this section shall affect the liability of such person to any further or other punishment to which he may be liable under the XLV of 1860. Indian Penal Code or any other law.

Sec. 24, Act III of 1911. **Punishment for registered members of criminal tribe found under suspicious circumstances.**

24. Whoever, being a registered member of any criminal tribe, is found in any place under such circumstances as to satisfy the Court,—

- (a) that he was about to commit, or aid in the commission of, theft or robbery, or
- (b) that he was waiting for an opportunity to commit theft or robbery,

shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine which may extend to one thousand rupees.

• Arrest of registered person found beyond prescribed limits.

25. (1) Whoever, being a registered member of Sec. 25, Act III of 1911, a criminal tribe,—

- (a) is found in any part of British India, beyond the area or place of residence, if any, to which his movements have been restricted or in which he has been settled without the prescribed pass, or in a place or at a time not permitted by the conditions of his pass, or
- (b) escapes from an industrial, agricultural or reformatory settlement or school,

may be arrested without warrant by any police-officer, village-headman or village-watchman, and may be taken before a Magistrate, who, on proof of the facts, shall order him to be removed to such area or place or to such settlement or school, as the case may be, there to be dealt with in accordance with this Act or any rules made thereunder.

(2) The rules for the time being in force for the removal of prisoners shall apply to all persons removed under this section or under any other provision of this Act :

Provided that an order from the Local Government or from the Inspector-General of Prisons shall not be necessary for the removal of such persons.

Notices of village-headmen, village-watchmen and owners or occupiers of land to give information in certain cases.

26. (1) Every village-headman and village watch- Sec 26, Act III of 1911.
man in a village in which any members of a criminal tribe reside, and every owner or occupier of land on which any such persons reside, and the agent of any such owner or occupier, shall forthwith communicate to the officer in charge of the nearest police-station any information which he may obtain of—

- (a) the failure of any such person to appear and give information when required to do so by a notice issued under section 5 ; or
- (b) the departure of any registered member of a criminal tribe from such village or from such land, as the case may be.

(2) Every village-headman and village-watchman in a village, and every owner or occupier of land and the agent of any such owner or occupier, shall forthwith communicate to the officer in charge of the nearest police-station any information which he may obtain of the arrival at such village or on such land, as the case may be, of any persons who may reasonably be suspected of being members of any criminal tribe.

Sec. 27, Act III of 1911. **27.** Any village-headman, village-watchman, owner or occupier of land, and the agent of any such owner or occupier, who fails to comply with the requirements of section 26, shall be deemed to have committed an offence punishable under the first part of section 176 of the Indian Penal Code.

Sec. 129, Act I of 1928. **28.** The Local Government, if it is satisfied that adequate provision has been made by the law of any State in India for the restriction of the movements or the settlement in a place of residence of persons such as are referred to in section 3, and for securing the welfare of persons so restricted or settled, may, with the consent of the Prince or Chief of that State, direct the removal to that State of any criminal tribe, or part of a criminal tribe, for the time being in the province, and may authorise the taking of all measures necessary to effect such removal :

Provided that no person shall be so removed if the Local Government is satisfied that he is a subject of His Majesty.

Supplemental.

Sec. 28, Act III of 1911. **29.** No Court shall question the validity of any notification issued under section 3, section 11, or section 12, on the ground that the provisions hereinbefore contained or any of them have not been complied with, or shall entertain in any form whatever the question whether they have been complied with ; but every such notification shall be conclusive proof that it has been issued in accordance with law.

Sec. 29, Act III of 1911. **30.** The enactments mentioned in Schedule II are hereby repealed to the extent specified in the fourth column thereof.

SCHEDULE I.

(See Section 23.)

CHAPTER XII.

Sections.

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SCHEDULE II.

(See Section 30.)

Year.	Number.	Short title.	Extent of repeal.
1911	III	The Criminal Tribes Act, 1911.	So much of the Act as has not been repealed.
1914	X	The Repealing and Amending Act, 1914.	So much of Schedule II as relates to the Criminal Tribes Act, 1911.
1915	XI	The Repealing and Amending Act, 1915.	So much of Schedule I as relates to the Criminal Tribes Act, 1911.
1920	XXXVIII	The Devolution Act, 1920 ...	So much of Schedule I as relates to the Criminal Tribes Act, 1911.
1923	I	The Criminal Tribes (Amendment) Act, 1923.	The whole Act.

* Devolution Act, 1920.

(ACT XXXVIII OF 1920.)

[Passed on the 14th September, 1920.]

An Act to relax the control in certain respects of the Governor-General

Council over Local Governments and to transfer to such Governments certain powers now exercisable by the Governor-General in Council.

WHEREAS powers of control are vested in the Governor-General in Council in virtue of certain enactments and it is expedient to relax those powers and to transfer to Local Governments powers under certain enactments now exercisable by the Governor-General in Council; It is hereby enacted as follows:—

- | | |
|---|---|
| Short title. | 1. This Act may be called the Devolution Act, 1920. |
| Amendment of certain enactments. | 2. The enactments specified in the First Schedule are hereby amended to the extent and in the manner mentioned in the fourth column thereof. |
| Consequential repeals. | 3. The enactments specified in the Second Schedule are hereby repealed to the extent mentioned in the fourth column thereof. |
| Saving of orders, etc., issued by previous authorities. | 4. Any appointment, notification, order, scheme, rule, form or bye-law made or issued, before the commencement of this Act, by an authority for the making or issuing of which a new authority is substituted by or under this Act, shall, unless inconsistent with this Act, be deemed to have been made or issued by such new authority unless and until superseded by an appointment, notification, order, scheme, rule, form or bye-law made or issued by such new authority. |

* The provisions relating to the Criminal Acts alone have been printed here, those relating to Civil and Revenue Acts having been omitted.

THE FIRST SCHEDULE.

(See Section 2.)

PART I.—Acts of the Governor-General in Council.

Year.	No.	Short title or subject.	Amendments.
1851	VIII	The Indian Tolls Act, 1851.	In section 2, the words 'not exceeding the rates mentioned in the Schedule annexed to this Act' and the Schedule, shall be omitted.
1859	XIII	The Workman's Breach of Contract Act, 1859.	In section 5, the words 'by the Governor-General of India in Council or' shall be omitted.
1860	IX	The Employers and Workmen Disputes Act, 1860.	In section 9, the words 'of the Governor-General of India in Council or' shall be omitted.
1861	V	The Police Act, 1861 ...	In sections 2 and 3 after the word 'subject' the words 'in the case of officers of the Indian Police of and above the rank of Assistant Superintendent' shall be inserted.
1864	XV	The Indian Tolls Act, 1864.	The words from 'not exceeding' to 'schedule mentioned' in the Preamble, the whole of section 1 and the Schedule shall be omitted. In section 2, for the words from 'specified in the schedule' to the end of the section the words 'authorized to be levied under the said Act VIII of 1851,' shall be substituted.
1867	XXV	The Press and Registration of Books Act, 1867.	In section 21, for the words 'Governor-General of India in Council' the words 'Local Government' and for the words 'Gazette of India' the words 'local Gazette' shall be substituted.
1870	VIII	The Female Infanticide Prevention Act, 1870.	In section 1, the words 'with the previous sanction of the Governor-General of India in Council' shall be omitted. In section 3, the words 'confirmed by the Governor-General of India in Council and' and the words 'in the Gazette of India and also' shall be omitted. In section 7, for the words from 'and the Governor of Madras' to the end of the section the following shall be substituted, namely:— 'and the Local Government of any other part of British India may, by notification published in the local official Gazette, extend it to any part of the territories under the administration of that Local Government.'
1871	IV	The Coroners Act, 1871 ...	In section 86, for the words 'Governor-General in Council' the words 'Local Government, shall be substituted.
1874	IX	The European Vagrancy Act, 1874.	In section 1, for the words from 'as the Governor-General in Council' to the end of the section the following shall be substituted, namely:—'as in the case of Coorg and the said Islands the Local Government by notification in the local official Gazette, and in the case of any of the said dominions,

PART I.—*Acts of the Governor-General in Council*—contd.

Year.	No.	Short title or subject.	Amendments.
1874	IX	The European Vagrancy Act, 1874— <i>concl'd.</i>	<p>the Governor-General in Council by notification in the Gazette of India, from time to time, appoints in this behalf'.</p> <p>To the same section, the following shall be added, namely:—'Provided further, that in the case of any of the said dominions which is within the political charge of a Local Government, the power conferred on the Governor-General in Council by this section shall be exercised by that Local Government by notification in the local official Gazette.'</p> <p>In sections 14 and 86, the words 'subject to the control of the Governor-General in Council' shall be omitted.</p> <p>In section 26, for the words 'Government of India' the words 'Governor, Lieutenant-Governor or Chief Commissioner of the Province concerned' and for the words 'Governor-General in Council' the words 'Local Government' shall be substituted.</p> <p>To section 95 following shall be added, namely:—'Provided that, in the case of any such place which is within the political charge of a Local Government, the power conferred on the Governor-General in Council by this section shall be exercised by that Local Government by notification in the local Official Gazette.'</p>
1878	I	The Opium Act, 1878 ...	<p>In sections 5 and 8 for the words 'with the previous sanction' the words 'subject to the control' shall be substituted.</p> <p>In section 13 the words 'with the previous sanction of the Governor-General in Council' shall be omitted.</p>
1878	VII	The Indian Forest Act, 1878.	<p>In section 1 the words 'with the previous sanction of the Governor-General in Council' shall be omitted.</p> <p>In section 31 the words 'and subject to the control of the Governor-General in Council' shall be omitted.</p> <p>In section 39, the words 'subject to the control of the Governor-General in Council' and the words 'subject to the like control or sanction, respectively' shall be omitted.</p>
1879	VI	The Elephant's Preservation Act, 1879.	<p>In section 1, the words 'with the previous sanction of the Governor-General in Council' shall be omitted.</p> <p>In section 6, the words 'subject to the control of the Governor-General in Council' shall be omitted.</p>
1879	XIV	The Hackney-carriage Act, 1879.	<p>In section 5 for the words 'Governor-General in Council' where they first occur the words 'Local Government' shall be substituted.</p>

PART I.—*Acts of the Governor-General in Council*—contd.

Year.	No.	Short title or subject.	Amendments.
1980	XIII	The Vaccination Act, 1880.	In sections 4, 5 and 20 the words 'subject to the control of the Governor-General in Council' shall be omitted.
1886	VI	The Births, Deaths and Marriages Registration Act, 1886.	<p>In sub-section (2) of section 11, the words 'with the previous approval of the Governor-General in Council' shall be omitted.</p> <p>To section 13 the following proviso shall be added, namely:—'Provided that the powers and functions exercisable by the Governor-General in Council under this section shall, in the case of any such dominions which are within political charge of a Local Government, be exercised by that Local Government by notification in the local official Gazettee.'</p> <p>To sub-section (2) of section 24, the following shall be added, namely:—'Provided that such certified copies shall, in the case of any such dominions which are within the political charge of a Local Government be sent to the Registrar-General of Births, Deaths and Marriages for the territories, under the administration of that Local Government.'</p> <p>To section 32, the following shall be added, namely:—'Provided that such register or record shall, in the case of any such dominions which are within the political charge of a Local Government, be sent to the Registrar-General of Births, Deaths and Marriages for the territories under the administration of that Local Government.'</p> <p>For sub-section (1) of section 33, the following shall be substituted, namely:—</p> <p>'(1) Any Local Government, in the case of registers or records sent under section 32 to the Registrar-General for the territories under its administration, and the Governor-General in Council, in the case of registers or records so sent to any other Registrar-General appointed by him under the said section may appoint so many persons as it or he, as the case may be, thinks fit to be Commissioners for examining such registers or records.'</p> <p>In sub-section (2) of the same section, for the words 'Governor-General in Council' the words 'authority appointing them' shall be substituted.</p> <p>For sub-section (1) of section 35-A, the following shall be substituted, namely:—</p> <p>'(1) The Governor-General in Council or the Local Government, if he or it thinks fit, may, by notification in the Gazette of India or the local official Gazette, as the case may be, appoint more Commissions</p>

PART I.—Acts of the Governor-General in Council—contd.

Year.	No.	Short title or subject.	Amendments.
1886	VI	The Births, Deaths and Marriages Registration Act, 1886— <i>concl'd.</i>	than one for the purposes of section 38, each such Commission consisting of so many and such members, and having its functions restricted to the disposal, under this Act and the rules thereunder, of such registers and records sent under section 32 to the Registrar-General, as may be specified in the notification.'
1897	III	The Epidemic Diseases Act, 1897.	Sub-section (3) of section 2 shall be omitted. After section 2, the following section shall be inserted, namely :— ' 2-A. When any Local Government is satisfied that the Concurrent powers of Local Government, Province or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease and that the ordinary provisions of the law for the time being in force are insufficient to prevent the outbreak of such disease or the spread thereof, such Local Government may exercise all or any of the powers conferred by this Act on the Governor-General in Council.'
1899	XIII	The Glanders and Farcy Act, 1899.	In sub-section (1) of section 2, for the words 'Governor-General in Council' the words 'Local Government' and for the words 'Gazette of India' the words 'local official Gazette' shall be substituted.
1900	III	The Prisoners Act, 1900...	In sub-section (1) of section 19, for the words 'British India' the words 'the Province' and for the words 'Governor-General in Council' the words 'Local Government' shall be substituted. For section 21 the following section shall be substituted, namely :— ' 21. (1) The Local Government may grant to any person under sentence of penal servitude a license to be at large within such part of the Province and during such portion of his term of penal servitude as may be specified in the license and upon such conditions as the Governor-General in Council may by general or special order prescribe. (2) The Local Government may revoke or subject to such conditions, alter any license granted under sub-section (1).' In section 23 for the words 'Government of India' the words 'Local Government' shall be substituted. For sub-section (4) of section 30, the following shall be substituted, namely :— ' (4) In any case in which the Local Government is competent under sub-section (1) to order the removal of a

PART I.—Acts of the Governor-General in Council—contd.

Year.	No.	Short title or subject.	Amendments.
1900	III	The Prisoners Act, 1900 — <i>consolid.</i>	<p>prisoner to a lunatic asylum or other place of safe custody within the Province, the Local Government may order his removal to any such asylum or place within any other Province or within the territories of any Native Prince or State in India by agreement with the Local Government of such other Province or with such Native Prince or State, as the case may be; and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed under sub-section (1) shall, so far as they can be made applicable, apply to a prisoner removed under this sub-section.</p> <p>Section 32 shall be renumbered section 32 (1) and in the same section for the words 'Governor-General in Council' the words 'Local Government' and for the words 'British India' the words 'the Province' shall be substituted.</p> <p>And to the same section the following sub-section shall be added, namely:</p> <p>'(2) In any case in which the Local Government is competent under sub-section (1) to appoint places within the Provinces and to order the removal thereto of persons under sentence of transportation, the Local Government may appoint such places in any other Province by agreement with the Local Government of that Province and may by like agreement give orders or duly authorize some officer to give orders for the removal thereto of such persons.'</p> <p>In section 42, the words 'The Governor-General in Council or', the words 'the Gazette of India or' and the words 'as the case may be' shall be omitted.</p>
1901	VIII	The Indian Mines Act, 1901.	In sub-section (1) of section 18, the words 'the Governor-General in Council or' where they occur in both places shall be omitted.
	XIV	The Indian Criminal Law Amendment Act, 1908.	<p>In sub-section (2) of section 1, for the words 'Governor-General in Council' the words 'Local Government of any other Provinces' for the words 'Gazette of India' the words 'official gazette and' for the words 'any other Province' the words 'that Province' shall be substituted.</p> <p>In sub-section (3) of the same section for the words 'Governor-General in Council' when they occur in both places, the words 'Local Government' shall be substituted.</p>

PART I.—*Acts of the Governor-General in Council—contd.*

Year.	No.	Short title or subject.	Amendments.
1908	XIV	The Indian Criminal Law Amendment Act, 1908— <i>concl'd.</i>	In sub-section (1) of section 2, the words 'to the Governor General in Council or' the words the 'Governor General in Council or' and the words 'with the previous sanction of the Governor General in Council' shall be omitted. In clause (b) of section 15 (2) and in section 16, for the words 'Governor General in Council' wherever they occur the words 'Local Government' shall be substituted.
1908	XVII	The Indian Emigration Act, 1908.	In sections 2 (2), 27 (2), 32, 74 (2) and 77 (2), for the words 'Governor-General in Council', wherever they occur, the words 'Local Government' shall be substituted. In sub-section (1) of section 81 for the words 'Governor General in Council' the words 'Local Government' and for the words 'Gazette of India' the words 'local official Gazette' shall be substituted. In the same sub-section, after clause (f) the following shall be inserted, namely— 'and (g) to provide for the disposal of emigrants who may be landed under section 74. (1-A) The Governor-General in Council may by notification in the Gazette of India make rules consistent with this Act—' In the same sub-section clause (n) shall be omitted, clauses (g), (h), (i), (j), (k), (l), (m), (o), (p), (q), (r) and (s), shall be renumbered clauses (i) to (xii) respectively and in the proviso for the letter and brackets '(h)' the figures and brackets "(ii)" and for the words 'this section' the words 'this sub-section' shall be substituted.
1910	IX	The Indian Electricity Act, 1910.	Sub-section (8) of section 3 shall be omitted. In section 10, the words 'with the previous sanction of the Governor-General in Council' shall be omitted. In sub-section (2) of section 32, for the words 'Governor-General in Council' in both places where they occur the words 'Local Government' and for the word 'he' the word 'it' shall be substituted. In sub-section (1) of section 34, for the words 'Governor General in Council' the words 'Local Government' shall be substituted.
1911	III	The Criminal Tribes Act, 1911.	For section 11, the following section shall be substituted, namely :— "11. (1) If the Local Government considers that it is expedient that any criminal tribe should be— (a) restricted in its movements to any specified area, or

PART I.—Acts of the Governor-General in Council—contd.

Year.	No.	Short title or subject.	Amendments.
1911	III	The Criminal Tribes Act, 1911— <i>concl'd.</i>	<p>(b) settled in any place of residence, the local Government may, by notification in the local official Gazette, declare that such criminal tribe shall be restricted in its movements to the area specified in the notification or shall be settled in the place of residence so specified, as the case may be.</p> <p>(2) Before making any such declaration, the Local Government shall consider the following matters:—</p> <p>(i) the nature and the circumstances of the offences in which the members of the criminal tribe or believed to have been concerned ;</p> <p>(ii) whether the criminal tribe follows any lawful occupation and whether such occupation is its real occupation or merely a pretence for the purpose of facilitating the commission of crimes ;</p> <p>(iii) the suitability of the area to which it is proposed to restrict the movements of the criminal tribe or of the place of residence in which it is proposed to settle it; and</p> <p>(iv) the manner in which it is proposed that the criminal tribe shall earn its living within the restricted area or in the settlement and the adequacy of the arrangements which are proposed therefor.'</p> <p>Section 12 shall be omitted.</p> <p>In sections 1, 16, 17 (1), 20 (2) (e) and 28, for the word and figure 'section 12' the word and figure 'section 11' shall be substituted.</p> <p>In section 19 for the words 'Governor-General in Council' the words 'Local Government' shall be substituted, and for the words 'in any part of British India' the following shall be substituted, namely:—</p> <p>'in the province, or, with the previous consent of the Local Government of any other province, in such other province.'</p>
1912	IV	The Indian Lunacy Act, 1912.	<p>In sub-section (1) of section 35, for the words from 'Any lunatic' to 'Governor-General in Council' the following shall be substituted, namely:—</p> <p>'Any lunatic may, in accordance with any general or special order of the Local Government, be removed from any asylum established by Government to any other asylum within the province, or to any other asylum in any other province, with the consent of the Local Government of that province.'</p>

PART I.—*Act of the Governor-General in Council—contd.*

Year.	No.	Short title or subject.	Amendments.
1912	IV	The Indian Lunacy Act, 1912— <i>concl'd.</i>	<p>In sub-section (2) of the same section, for the words 'Governor-General in Council' the words 'Local Government' and for the word 'he' where it first occurs the word 'it' shall be substituted; and in the same sub-section, for the words 'in British India' the following shall be substituted, namely:—</p> <p>'In the province, or to any asylum, jail or other place of safety in any other province with the consent of the Local Government of that province.'</p> <p>For section 85, the following section shall be substituted, namely:—</p> <p>'85. The Magistrates or Courts exercising jurisdiction in any province may send lunatics or any class of lunatics to any asylum situate in any other province in accordance with any general or special order of the Local Government made in that behalf with the consent of the Local Government of such other province.'</p> <p>In sub-section (1) of section 91, the words 'subject to the control of the Governor-General in Council' shall be omitted.</p> <p>In section 99 for the words 'Governor-General in Council' the words 'Local Government' and for the words 'British India', the words 'the province' shall be substituted.</p>
1914	IX	The Local Authorities Loans Act, 1914.	<p>To sub-section (1) of section 3, the following further proviso shall be added, namely:—</p> <p>'Provided further that in the case of loans other than loans made by the Local Government, no amount exceeding twenty-five lakhs of rupees shall be borrowed unless the terms, including the date of flotation, of such loan have been approved by the Governor-General in Council.'</p> <p>In sub-section (1) of section 4 for the words 'Governor General in Council' where they first occur the words 'Local Government' shall be substituted.</p> <p>In the same sub-section, in clause (vi) the words from 'without' to the end of the clause shall be omitted; and for clause (vii) the following shall be substituted, namely:—</p> <p>'(viii) the cases in which local authorities may take loans from persons other than the Local Government.'</p> <p>Sub-section (2) of section 4, and in sub-section (3), the words from 'in the Gazette of India' to 'delegated power' shall be omitted.</p>

PART I.—*Acts of the Governor-General in Council*—contd.

Year.	No.	Short title or subject.	Amendments.
1917	I	The Inland Steam-vessels Act, 1917.	In sub-section (1) of section 19, the words 'with the previous sanction of the Governor-General in Council' shall be omitted.
1918	II	The Cinematograph Act, 1918.	<p>In sub-section (3) of section 1, for the words 'Governor-General in Council' the words 'Local Government' and for the words 'Gazette of India' the words 'local official Gazette' shall be substituted.</p> <p>In sub-section (1) of section 8, for the words 'Governor-General in Council' the words 'Local Government' shall be substituted.</p> <p>Sub-section (3) of the same section shall be omitted; and in sub-section (4), the words 'Gazette of India or' and the words 'as the case may be' shall be omitted.</p>
1919	XII	The Poisons Act, 1919...	<p>In sub-section (1) of section 4 for the words 'with the previous sanction' the words 'subject to the control' shall be substituted.</p> <p>In section (1) of section 8, for the words 'the Governor-General in Council or' the word 'and' shall be substituted.</p>

THE SECOND SCHEDULE.

(See Section 3.)

Acts of the Governor-General in Council.

Year.	No.	Short title or subject.	Extent of repeal.
1890	XVI	The Births, Deaths and Marriages Registration Act (1886) Amendment Act, 1890.	Section 2.
1911	XV	The Indian Forest Amendment Act, 1911.	Section 4 and clauses (a) and (e) of section 5

Dourine (Amendment) Act, 1920.

(ACT VIII OF 1920.)

[Passed on the 4th March, 1920.]

An Act to amend the Dourine Act, 1910.

V of 1910.

WHEREAS it is expedient to amend the Dourine Act, 1910; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Dourine (Amendment) Act, 1920.

V of 1910.

Amendment of section 5, Act V of 1910.

2. In section 5 of the Dourine Act, 1910 (hereinafter referred to as the said Act),—

(1) the word "and" at the end of clause (a) shall be omitted; and

(2) after clause (b) the following clause shall be added, namely :—

"(c) direct, by order in writing, the owner or keeper of any house which, in the opinion of the Inspectors, is affected with dourine to remove it or permit it to be removed for the purpose of segregation to a place specified in the order, and such direction shall be sufficient authority for the detention of the horse in that place for that purpose."

Amendment of section 6, Act V of 1910.

3. In section 6 of the said Act the word and letter " clause (b) " shall be omitted.

Amendment of section 8, Act V of 1910.

4. In section 8 of the said Act—

(1) in clause (a) the word and letter "clause (b)" shall be omitted; and

(2) in clause (b)—

(a) after the words " on microscopical examination " the words " or by other scientific test " shall be inserted; and

(b) for sub-clause (ii) the following shall be substituted namely:—

" (ii) in the case of a mare, with the previous sanction of such authority as the Local Government may appoint in this behalf, or, if so empowered by the Local Government, without such sanction, cause it to be destroyed."

Amendment of section 14, Act V of 1910.

5. In sub-section (2) of section 14 of the said Act—

(1) for clause (a) the following shall be substituted, namely :—

" (a) regulate the exercise of the powers conferred on Inspectors under section 5 " ; and

(2) the word "and" at the end of clause (b) and the whole of clause (c) shall be omitted.

Amendment of section 15, Act V of 1910.

6. For clauses (b) and (c) of section 15 of the said Act, the following shall be substituted, namely :—

" (b) any horse in respect of which an order under clause (b) or clause (c) of section 5 is in force."

Elections Offences and Inquiries Act, 1920.

(ACT XXXIX OF 1920.)

[Passed on the 14th September, 1920.]

An Act to provide for the punishment of malpractices in connexion with elections, and to make further provision for the conduct of inquiries in regard to disputed elections to legislative bodies constituted under the Government of India Act.

WHEREAS it is expedient to provide for the punishment of malpractices in connexion with the elections, and to make further provision for the conduct of inquiries in regard to disputed elections to legislative bodies constituted under the Government of India Act; It is hereby enacted as follows :—

PRELIMINARY.

Short title and extent. 1. (1) This Act may be called the Indian Elections Offences and Inquiries Act, 1920; and

(2) It extends to the whole of British India.

PART I.**AMENDMENT OF THE INDIAN PENAL CODE AND CODE OF CRIMINAL PROCEDURE.**

2. (1) In section 21 of the Indian Penal Code, after the 10th entry, XLV of 1860,

the following shall be inserted, namely, "*Eleventh* :—
Amendment of the Indian Penal Code. Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election"; and after *Explanation 2*, the following shall be added, namely :—

"*Explanation 3*.—The word 'election' denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election."

(2) After Chapter IX of the same Code the following Chapter shall be inserted, namely :—

"CHAPTER IX-A.*Of offences relating to elections.*

"Candidate,"
"Electoral right"
defined.

171-A. For the purposes of this Chapter—

(a) "Candidate" means a person who has been nominated as a candidate at any election and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate thereat: provided that he is subsequently nominated as a candidate at such election;

(b) "Electoral right" means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

Bribery.

171-B. (1) Whoever—

(i) Gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(ii) Accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right,

commits the offence of bribery :

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

171-C. (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

(a) Threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) Induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

171-D. Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name ;

and whoever abets, procures or attempts to procure the voting by any person in any such way,

commits the offence of personation at an election.

171-E. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both :

Provided that bribery by treating shall be punished with fine only.

Explanation :—‘ Treating ’ means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

Punishment for undue influence or personation at an election.

171^A-F. Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

171-G. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

False statement in connection with an election.

171-H. Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees :

Illegal payments in connection with an election.

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

171-I. Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at, or in connection with, an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees."

Failure to keep election accounts.

Amendment of the Code of Criminal Procedure.

3. (1) In section 196 of the Code of Criminal Procedure, 1898, after the words " Chapter VI " the words " or IX-A " shall be inserted. V of 1898.

(2) In Schedule II to the same Code after the entries relating to Chapter IX of the Indian Penal Code the following shall be added, XLV of 1860. namely :—

" CHAPTER IX-A.—OFFENCES RELATING TO ELECTIONS.

171-E	Bribery	...	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for one year, or fine, or both or if treating only, fine only.	Presidency Magistrate or Magistrate of the first class.
171-F	Undue influence and personation at an election.		Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for one year, or fine, or both.	Ditto
171-G	False statement in connection with an election.		Ditto	Ditto	Ditto	Ditto	Fine	Ditto
171-H	Illegal payments in connection with elections.		Ditto	Ditto	Ditto	Ditto	Fine of 500 rupees	Ditto
171-I	Failure to keep election accounts.		Ditto	Ditto	Ditto	Ditto	Ditto	Ditto

PART II,

ELECTION INQUIRIES *and other matters.*

Definitions. 4. In this Part, unless there is anything repugnant in the subject or context,—

(a) "cost" means all costs, charges and expenses of, or incidental to, an inquiry ;

(b) "election" means an election to either chamber of the Indian legislature or to a Legislative Council constituted under the Government of India Act ;

(c) "inquiry" means an inquiry in respect of an election by Commissioners appointed for that purpose by the Governor-General, Governor or Lieutenant-Governor ;

(d) "pleader" means any person entitled to appear and plead for another in a Civil Court and includes an advocate, a vakil, and an attorney of a High Court.

V of 1908. 5. Commissioners appointed to hold an inquiry shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters :—

- (a) discovery and inspection,
- (b) enforcing the attendance of witnesses, and requiring the deposit of their expenses,
- (c) compelling the production of documents,
- (d) examining witnesses on oath,
- (e) granting adjournments,
- (f) reception of evidence taken on affidavit, and
- (g) issuing commissions for the examination of witnesses,

V of 1898. and may summon and examine *suo motu* any person whose evidence appears to them to be material ; and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

*Explanation :—*For the purposes of enforcing the attendance of witnesses, the local limits of the Commissioners' jurisdiction shall be the limits of the Province in which the election was held.

I of 1872. 6. The provisions of the Indian Evidence Act, 1872, shall, subject to the provisions of this Act, be deemed to apply in all respects to an inquiry.

Documentary evidence. 7. Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence on the ground that it is not duly stamped or registered.

8. (1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in an inquiry upon the ground that the answer to such question will criminate or may tend, directly or indirectly, to criminate him; or that it will expose, or tend, directly or indirectly, to expose him to a penalty or forfeiture of any kind :
- Obligation of witness to answer and certificate of indemnity.
- Provided that—
- (i) no person who has voted at an election shall be required to state for whom he has voted; and
 - (ii) a witness who, in the opinion of the Commissioners, has answered truly all questions which he has been required by them to answer shall be entitled to receive a certificate of indemnity, and such certificate may be pleaded by such person in any Court and shall be deemed to be a full and complete defence to or upon any charge under Chapter IX-A of the Indian Penal Code arising out of the matter to XLV of 1860, which such certificate relates, nor shall any such answer be admissible in evidence against him in any suit or other proceeding.

(2) Nothing in sub-section (1) shall be deemed to relieve a person receiving a certificate of indemnity from any disqualification in connection with an election imposed by any law or any rule having the force of law.

9. Any appearance, application or act before the Commissioners may be made or done by the party in person or by a pleader duly appointed to act on his behalf :

Appearance by pleader.

Provided that any such appearance shall, if the Commissioners so direct, be made by the party in person.

10. The reasonable expenses incurred by any person in attending to give evidence may be allowed by the Commissioners to such person, and shall, unless the Commissioners otherwise direct, be deemed to be part of the costs.

Expenses of witnesses.

11. (1) Costs shall be in the discretion of the Commissioners, and the Commissioners shall have full power to determine by and to whom and to what extent such costs are to be paid and to include in their report all necessary recommendations for the purposes aforesaid. The Commissioners may allow interest on costs at a rate not exceeding six per cent per annum, and such interest shall be added to the costs.

Costs and pleaders' fees, etc.

(2) The fees payable by party in respect of fees of his adversary's pleader shall be such fees as the Commissioners may allow.

12. Any order made by the Governor-General or Governor or Lieutenant-Governor on the report of the Commissioners regarding the costs of the inquiry may be produced before the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or, where such place is within the local limits of the ordinary original civil

Execution of orders as to costs.

jurisdiction of a chartered High Court, before the Court of Small Causes having jurisdiction there, and such Court shall execute such order or cause it to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

XLV of 1860. Disqualification of persons found guilty of election offences. 13. Any person who has been convicted of an offence under section 171-E, or 171-F, of the Indian Penal Code or has been disqualified from exercising any electoral right, for a period of not less than five years, on account of malpractices in connection with an election shall be disqualified for five years from the date of such conviction or disqualification from—

- (a) being appointed to, or acting in, any judicial office ;
- (b) being elected to any office of any local authority when the appointment to such office is by election, or holding, or exercising any such office to which no salary is attached ;
- (c) being elected or sitting or voting as a member of any local authority ; or
- (d) being appointed or acting as a trustee of a public trust :

Provided that the Governor-General, in the case of an election to the Council of State or the Legislative Assembly, and the Governor or the Lieutenant-Governor, in the case of an election to his Legislative Council, may exempt any such person from such disqualification.

14. (1) Every officer, clerk, agent or other person who performs any duties in connection with the recording or counting of votes at an election shall maintain and aid in maintaining the secrecy of the voting and shall not (except for some purpose authorized by or under any law) communicate to any person any information calculated to violate such secrecy.

(2) Any person who wilfully acts in contravention of the provisions of this section shall be punished with imprisonment of either description for a term not exceeding three months or with fine or with both.

Electricity (Amendment) Act, 1922.

(ACT I OF 1922.)

[Passed on the 25th January, 1922.]

An Act further to amend the Indian Electricity Act, 1910.

IX of 1910. WHEREAS it is expedient further to amend the Indian Electricity Act, 1910 ; It is hereby enacted as follows :—

Short title. 1. This Act may be called the Indian Electricity (Amendment) Act, 1922.

IX of 1910. Amendment of section 2, Act IX of 1910. 2. For clause (1) of section 2 of the Indian Electricity Act, 1910 (hereinafter referred to as the said Act), the following shall be substituted, namely :—

“ (1) ‘ service line ’ means any electric supply line through which energy is, or is intended to be, supplied by a licensee—

- (i) to a single consumer either from a distributing main or immediately from the licensee's premises, or
- (ii) from a distributing main to a group of consumers on the same premises or on adjoining premises supplied from the same point of the distributing main."

Amendment of
section 3, Act IX of
1910.

3. In sub-clause (ii) of clause (a) of sub-section 2 of section 3 of the said Act, for the words " General Officer Commanding the Division, the words " Director of Military Works " shall be substituted.

Amendment of
section 17, Act IX
of 1910.

4. In section 17 of the said Act,—

- (a) in sub-section (1), for the words " not being service lines immediately attached or intended to be immediately attached to a distributing main," the words " not being either service lines " shall be substituted, and
- (b) in sub-section (2), after the word " laying," the words " or placing " shall be inserted, and the words " underground " and " immediately attached or intended to be immediately attached to a distributing main " shall be omitted.

Amendment of
section 18, Act IX
of 1910.

5. In section 18 of the said Act,—

(a) for sub-section (3), the following sub-section shall be substituted, namely :—

" (3) Where any tree standing or lying near an aerial line, or where any structure or other object which has been placed or has fallen near an aerial line subsequently to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of energy or the accessibility of any works, a Magistrate of the first class or, in a Presidency-town or Rangoon, the Commissioner of Police, may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he thinks fit"; and

(b) after sub-section (4), the following *explanation* shall be added, namely :—

" *Explanation.*—For the purposes of this section, the expression " tree " shall be deemed to include any shrub, hedge, jungle-growth or other plant."

Insertion of new
section 19-A in Act
IX of 1910.

6. After section 19 of the said Act, the following section shall be inserted under the heading " *Supply*," namely :—

" 19-A. For the purposes of this Act, the point at which the supply of energy by a licensee to a consumer shall be deemed to commence shall be determined in such manner as may be prescribed."

Point where
supply is delivered.

Amendment of
section 20, Act IX
of 1910.

7. In section 20 of the said Act,—

(a) in clause (c) of sub-section (1), after the word "supply-lines," the word "meters" shall be inserted; and

(b) after sub-section (2), the following sub-section shall be added, namely:—

"(3) Where a consumer refuses to allow a licensee or any person authorized as aforesaid to enter his premises in pursuance of the provisions of sub-section (1) or sub-section (2), or when such licensee or person has so entered, refuses to allow him to perform any act which he is authorized by those sub-sections to perform, or fails to give reasonable facilities for such entry or performance, the licensee may, after the expiry of twenty-four hours from the service of a notice in writing on the consumer, cut off the supply to the consumer for so long as such refusal or failure continues, but for no longer."

Amendment of section 21, Act IX of 1910. **8.** In section 21 of the said Act, sub-section (2) shall be re-numbered (4), and after sub-section (1) the following sub-sections shall be inserted, namely:—

"(2) Subject to the provisions of sub-section (1), a licensee may, with the previous sanction of the Local Government, given after consulting the local authority, where the licensee is not the local authority, make conditions not inconsistent with this Act or with his license or with any rules made under this Act, to regulate his relations with persons who are or intend to become consumers, and may with the like sanction given after the like consultation add to or alter or amend any such conditions; and any conditions made by a licensee without such sanction shall be null and void:

Provided that any such conditions made before the 23rd day of January 1922 shall, if sanctioned by the Local Government on application made by the licensee before such date as the Local Government may, by general or special order, fix in this behalf, be deemed to have been made in accordance with provisions of this sub-section.

(3) The Local Government may, after the like consultation, cancel any condition or part of a condition previously sanctioned under sub-section (2) after giving to the licensee not less than one month's notice in writing of its intention so to do."

Amendment of section 23, Act IX of 1910. **9.** To section 23 of the said Act, the following sub-sections shall be added, namely:—

"(3) In the absence of an agreement to the contrary, a licensee may charge for energy supplied by him to any consumer—

(a) by the actual amount of energy so supplied, or

(b) by the electrical quantity contained in the supply, or

(c) by such other method as may be approved by the Local Government.

(4) Any charges made by a licensee under clause (c) of sub-section (3) may be based upon, and vary in accordance with, any one or more of the following considerations, namely:—

(a) the consumer's load factor, or

(b) the power factor of his load, or

- (c) his total consumption of energy during any stated period, or
 (d) the hours at which the supply of energy is required."

Amendment of
 section 24, Act IX
 of 1910.

10. In section 24 of the said Act,—

- (a) the first paragraph ending with the words "but no longer" shall be renumbered as sub-section (1), and, in that sub-section as renumbered, for the words "other sum" where they first occur, the words "sum, other than a charge for energy", shall be substituted; and
 (b) the proviso shall be re-numbered sub-section (2) and, in that sub-section as re-numbered, the words "Provided that" shall be omitted, and to the sub-section the following proviso shall be added, namely :

"Provided that the prohibition contained in this sub-section shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electric Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request."

Amendment of
 section 26, Act IX
 of 1910.

11. In sub-section (6) of section 26 of the said Act, the words "on the basis of the previous supply" shall be omitted, and to the sub-section the following proviso shall be added, namely :

"Provided that, before either a licensee or a consumer applies to the Electric Inspector under this sub-section, he shall give to the other party not less than seven days' notice of his intention so to do."

Amendment of
 section 27, Act IX
 of 1910.

12. To the third proviso to section 27 of the said Act, the following shall be added, namely —

"unless the Local Government, after such inquiry as it thinks fit, considers that such consent has been unreasonably withheld."

Amendment of
 section 28, Act IX
 of 1910.

13. In sub-section (1) of section 28 of the said Act, the first proviso and the word "also" in the second proviso shall be omitted.

Amendment of
 section 30, Act IX
 of 1910.

14. In clause (b) of sub-section (1) of section 30 of the said Act,—

- (a) in sub-clause (ii) for the figures "1881" the figures "1911" shall be substituted; and

- (b) after sub-clause (iii), the following shall be inserted, namely :—
 "or

- (iv) to which the Local Government, by general or special order, declares the provisions of this sub-section to apply."

Amendment of
 section 33, Act IX
 of 1910.

15. For sub-section (1) of section 33 of the said Act, the following sub-section shall be substituted, namely :—

"(1) If any accident occurs in connexion with generation, transmission, supply or use of energy in, or in connexion with, any part of the

electric supply-lines or other works of any person, and the accident results or is likely to have resulted in loss of life or personal injury, such person shall give notice of the occurrence, and of any loss of life or personal injury actually occasioned by the accident, in such form and within such time and to such authorities as the Local Government may, by general or special order, direct."

16. In section 35 of the said Act, sub-section (3) shall be omitted, and sub-section (4) shall be re-numbered, (3), and in
 Amendment of
 section 35, Act IX
 of 1910. sub-section (3) as re-numbered, clauses (a), (b) and (c) shall be re-numbered (b), (c) and (d), respectively, and the following shall be inserted as clause (a), namely :—

"(a) determine the number of members of which any such Board shall be constituted and the manner in which such members shall be appointed."

17. To sub-section (3) of section 36 of the said Act, the words "or, if the Governor-General in Council or the Local Government, as the case may be, by general or special order, so directs, to an Advisory Board" shall be added.
 Amendment of
 section 36, Act IX
 of 1910.

Amendment of
 section 37, Act IX
 of 1910.

18. In section 37 of the said Act,—

(a) in clause (j) of sub-section (2), the word "and" at the end shall be omitted, and after clause (k) of the same sub-section the following shall be inserted, namely :—

"and

(l) provide for any matter which is to be or may be prescribed"; and

(b) sub-section (3) shall be re-numbered (4), and the following sub-section shall be inserted after sub-section (2), namely :—

"(3) Any rules made in pursuance of clause (f) or clause (h) of sub-section (2) shall be binding on the Crown."

Amendment of
 section 44, Act IX
 of 1910.

19. In section 44 of the said Act,—

(a) for the words "three hundred" and "thirty," the words "five hundred" and "fifty," respectively, shall be substituted;

(b) for the words "the existence of artificial means," the words "if it is proved that any artificial means exist" shall be substituted;

(c) for the words "shall, where," the words "and that" shall be substituted; and

(d) for the words "be *prima facie* evidence," the words "it shall be presumed, until the contrary is proved," shall be substituted.

Amendment of
 section 51, Act IX
 of 1910.

20. In section 51 of the said Act, for the words "Governor-General in Council" in both places where they occur, the words "Local Government" shall be substituted.

Amendment of section 53, Act IX of 1910. 21. In clause (a) of sub-section (1) of section 53 of the said Act, for the words "the Secretary in the Public Works Department," the words "such officer as the Governor-General in Council or the Local Government, as the case may be, may designate in this behalf" shall be substituted.

Amendment of section 55, Act IX of 1910. 22. In section 55 of the said Act, after the word and figures "section 18," the words, figures and brackets "or section 34, sub-section (2)" shall be inserted.

Amendment of clause VI of the Schedule to Act IX of 1910. 23. In sub-clause (1) of clause VI of the Schedule to the said Act,—

- (a) after the word "where" where it first occurs, the words "after distributing mains have been laid down under the provisions of clause IV or clause V and the supply of energy through those mains or any of them has commenced," shall be inserted.
- (b) for the words "one hundred yards from any distributing main," the words "the area of supply" shall be substituted;
- (c) after the words "within one month from the making of the requisition," the words "or within such longer period as the Electric Inspector may allow" shall be inserted;
- (d) to clause (d) of the second proviso, the following words shall be added, namely:—
 - "but the licensee shall re-connect the supply with all reasonable speed on the cessation of the act or default or both, as the case may be, which entitled him to discontinue it"; and
- (e) in the fourth proviso—
 - (i) for the words "in the event of any requisition being made for a supply of energy from any distributing main of which", the words "if any requisition is made for a supply of energy and" shall be substituted; and
 - (ii) for the word "it" in clause (a), the words "nearest distributing main" shall be substituted.

Substitution of new clause VII of the Schedule to Act IX of 1910. 24. For clause VII of the Schedule to the said Act, the following shall be substituted, namely:—

"VII. The licensee shall, before commencing to lay down or place a service line in any street in which a distributing main has not already been laid down or placed, serve upon the local authority (if any) and upon the owner or occupier of all premises abutting on so much of the street as lies between the points of origin and termination of the service line so to be laid down or placed twenty-one days' notice stating the licensee intends to lay down or place a service line, and intimating that, if within the said period the local authority or any five or more of such owners or occupiers require, in accordance with the provisions of the license, that a supply shall be given for any public lamps or to their

premises, as the case may be, the necessary distributing main will be laid down or placed by the licensee at the same time as the service line."

Amendment of clause VIII of Schedule to Act IX of 1910. 25. In sub-clause (1) of clause VIII of the Schedule to the said Act,—

- (a) after the word "where" the words "after distributing mains have been laid down under the provisions of clause IV or clause V and the supply of energy through those mains or any of them has commenced" shall be inserted; and
- (b) for the words "distance of one hundred yards from any distributing main," the words "area of supply" shall be substituted.

Amendment of clause X of Schedule to Act IX of 1910.

26. In clause X of the Schedule to the said Act,—

- (a) the first part of the clause up to and including sub-clause (c) shall be omitted;
- (b) the first proviso shall be re-numbered sub-clause (1), and in that sub-clause as re-numbered —
 - (i) the words "Provided, first, that" shall be omitted and
 - (ii) for the words "so approved by the Local Government," the words, figures and brackets "approved by the Local Government in accordance with section 23, sub-section (3), clause (c), of the Indian Electricity Act, 1910" shall be substituted;
- (c) the second proviso shall be re-numbered sub-clause (2), and from that sub-clause as re-numbered the words "Provided, secondly, that" shall be omitted; and
- (d) the third proviso shall be re-numbered sub-clause (3), and from that sub-clause as re-numbered the words "Provided, thirdly, that" shall be omitted.

IX of 1910.

Amendment of clause XI of Schedule to Act IX of 1910.

27. In the first proviso to clause XI of the Schedule to the said Act,—

- (a) the words "or is satisfied" shall be omitted; and
- (b) for the words "may, after such inquiry (if any) as it think fit, make an order accordingly," the following shall be substituted, namely:—

Shall refer the matter to an Advisory Board and, if the Board recommends any alteration, may make an order in accordance with such recommendation."

Insertion of new clause XI-A in Schedule to Act IX of 1910.

28. After clause XI of the Schedule to the said Act, the following clause shall be inserted, namely:—

"XI-A. A licensee may charge a consumer a minimum charge for energy of such amount and determined in such manner as may be specified by his license, and such minimum charge shall be payable notwithstanding that no energy has been used by the consumer during the period for which such minimum charge is made."

Amendment of
clause XVI of Sched-
ule to Act IX of
1910.

29. In clause XVI of the Schedule to the said Act,—

- (a) in sub-clause (1) for the words " and the approximate height above or depth," the words " and, in the case of underground works the approximate depth " shall be substituted;
- (b) for sub-clause (2), the following shall be substituted, namely :—
(2) Every such plan shall be drawn to such scale as the Local Government may require: provided that no scale shall be required unless maps of the locality on that scale are for the time being available to the public"; and
- (c) for sub-clause (3), the following shall be substituted, namely :—
" (3) Every such section shall be drawn to horizontal and vertical scales which shall be such as the Local Government may require."

Electricity (Amendment) Act, 1923.

(ACT XL OF 1923.)

S. 29-A.—[*Added by Act XL of 1923*].

2. After section 29 of the Indian Electricity Act, 1910, the following section shall be inserted, namely :—

" 29-A. The provisions of sub-sections (3) and (4) of section 18 and of the *Explanation* thereto shall apply in the case of any aerial line placed by any railway administration as defined in section 3 of the Indian Railways Act, 1890, as if ^{IX of 1890.} references therein to the licensee were references to the railway administration."

Emigration Act, 1922.

(ACT VII OF 1922.)

[*Passed on the 5th March, 1922.*]

An Act to amend the law relating to emigration.

WHEREAS it is expedient to amend the law relating to emigration ;
It is hereby enacted as follows :

CHAPTER I, PRELIMINARY.

Short title and
extent.

1. (1) This Act may be called the Indian Emigration Act, 1922.

(2) It extends to the whole of British India.

Definitions.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

- (a) " dependent " means any woman or child who is related to an emigrant and any aged or incapacitated relative of an emigrant ;

- (b) "emigrant" means any person who emigrates or has emigrated or who has been registered as an emigrant under this Act, and includes any dependent of an emigrant, but does not include—
 - (i) any person emigrating to a country in which he has resided for not less than five years or the wife or child of such person, or
 - (ii) the wife or child of any person who has lawfully emigrated when such wife or child departs for the purpose of joining such person ;
 - (c) "emigrate" and "emigration" mean the departure by sea out of British India of—
 - (i) any person who departs under an agreement to work for hire in any country beyond the limits of India, and
 - (ii) any person who is assisted to depart, otherwise than by a relative, if he departs, for the purpose or with the intention of working for hire or engaging in agriculture in any country beyond the limits of India ;
 - (d) "prescribe" means to prescribe by rules made under this Act ;
 - (e) "work," with its grammatical variations, means skilled or unskilled work ;
 - (f) "skilled work" means—
 - (i) working as an artisan ; or
 - (ii) working as a clerk or shop assistant ; or
 - (iii) working for the purpose of any exhibition or entertainment ; or
 - (iv) service in any restaurant, tea-house, or other place of public resort ; or
 - (v) domestic service ; or
 - (vi) any other occupation which the Governor-General in Council may, by notification in the Gazette of India, declare to be skilled work ;
 - (g) "unskilled work" includes engaging in agriculture.
- (2) In case of any doubt or dispute arising otherwise than in the course of any legal proceedings, as to whether—
- (a) any person is an emigrant, or
 - (b) any work is skilled, or unskilled, or
 - (c) any person has been assisted otherwise than by a relative, within the meaning of this Act, the question shall be determined by such person and in such manner as the Local Government may prescribe, and such determination shall be final.

CHAPTER II.

PROTECTOR OF EMIGRANTS AND MEDICAL INSPECTORS.

3. (1) Subject to the control of the Governor-General in Council, the Local Government may appoint a person to be the Protector of Emigrants for any port situate within the territories administered by it from which emigration is lawful.
- Appointment of
Protectors of Emig-
rants.

(2) The Local Government may define the area to which the authority of a Protector of Emigrants so appointed shall extend.

(3) Every Protector of Emigrants shall be a public servant within the meaning of the Indian Penal Code.

XLV of 1860.

General duties of
Protector.

4. Every Protector of Emigrants, in addition to the special duties assigned to him by or under this Act, shall—

(a) protect and aid with his advice all emigrants ;

(b) cause, so far as he can, all the provisions of this Act and of the rules made thereunder to be complied with ;

(c) inspect, at the time of arrival, to such extent and in such manner as the Local Government may prescribe, vessels bringing return emigrants to the port for which he is Protector ;

(d) inquire into the treatment received by return emigrants both during the period of their residence in the country to which they emigrated, and also during the return voyage, and report thereon to the Local Government ;

(e) aid and advise return emigrants so far as he reasonably can ; and

(f) on being satisfied that any person intending to depart by sea out of British India, comes within one of the classes expressly excluded from the definition of emigrant in section 2, furnish such person with a certificate to the effect that such person is not an emigrant for the purpose of this Act.

5. (1) In any specified area where there is not a Protector of Emigrants, the Local Government, subject to the control of the Governor-General in Council, may appoint any person to perform all or any of the duties of a Protector of Emigrants under this Act.

Power to appoint
persons to exercise
functions of a Pro-
tector.

(2) Every person so appointed shall be a public servant within the meaning of the Indian Penal Code.

XLV of 1860.

6. (1) The Local Government may appoint one or more Medical Inspectors of Emigrants at any port from which emigration is lawful or at any other place, and, where more than one are appointed, may apportion their respective duties.

Appointment of
Medical Inspectors.

(2) Every Medical Inspector of Emigrants shall be a public servant within the meaning of the Indian Penal Code.

XLV of 1860.

7. The Governor-General in Council may, for the purpose of safeguarding the interests of emigrants in any place outside British India, appoint persons to be agents in such places, and may define their powers and duties.

Agents in foreign
countries.

8. The Local Government may, for the purpose of assisting any Protector of Emigrants appointed by it or any person appointed by it under section 5, constitute an Advisory Committee in such manner as it may think fit, and may prescribe the procedure to be followed and the functions to be performed by such committee.

Advisory Commit-
tees.

CHAPTER III.

EMIGRATION FOR THE PURPOSE OF UNSKILLED WORK.

9. (1) Emigration, for the purpose of unskilled work, shall not be lawful except from the ports of Calcutta, Madras, Bombay, Karachi, Negapatam, Tuticorin and Dhanushkodi, and from such other ports as the Governor-General in Council may, by notification in the Gazette of India, declare to be ports from which such emigration is lawful.

Ports from which emigration of unskilled workers is lawful.

(2) The Local Government may, by notification in the local official Gazette, fix for the purposes of this Act the limits of any port from which such emigration is lawful.

10. (1) Emigration, for the purpose of unskilled work, shall not be lawful except to such countries and on such terms and conditions as the Governor-General in Council, by notification in the Gazette of India, may specify in this behalf.

Countries to which emigration of unskilled workers is lawful.

(2) No notification shall be made under sub-section (1) unless it has been laid in draft before both Chambers of the Indian Legislature and has been approved by a resolution of each Chamber, either without modification or addition, or with modifications and additions to which both Chambers agree, but, upon such approval being given, the notification may be issued in the form in which it has been so approved.

11. (1) Where the Governor-General in Council has reason to believe that in any country to which emigration for the purpose of unskilled work is lawful plague or any other epidemic disease dangerous to human life has broken out, and that emigrants if allowed to emigrate to that country would be exposed to serious risk to life on arrival there, he may, by notification in the Gazette of India, declare that emigration to that country for the purpose of unskilled work shall cease to be lawful.

Power to suspend emigration of unskilled workers.

(2) Where a Local Government has reason to believe that such a state of affairs as is described in sub-section (1) exists in any country to which emigration for the purpose of unskilled work is lawful, it may, by notification in the local official Gazette, declare that emigration to that country for the purpose of unskilled work from any port in the territories administered by it shall cease to be lawful pending a reference to the Governor-General in Council.

(3) The Local Government publishing a notification under sub-section (2) shall forthwith report such notification with the reasons for it to the Governor-General in Council, who shall thereupon publish a notification in the Gazette of India confirming or cancelling the notification published by the Local Government.

12. Where the Governor-General in Council is satisfied that the ground on which a notification under sub-section (1) of section 11, or a notification under sub-section (3) of section 11 confirming a notification of a Local Government has been made with respect to any country, has ceased

Revocation of prohibition.

to exist, he may, by notification in the Gazette of India, declare that emigration to that country for the purpose of unskilled work shall again be lawful from a date to be specified in the notification.

13. (1) The Governor-General in Council may, by notification in the Gazette of India, prohibit, from a date, and for reasons, to be specified in the notification, all persons or any specified class of persons from emigrating to any specified country from the territories under the administration of any Local Government or any specified part thereof, for the purpose of unskilled work.

Powers of Governor-General in Council to prohibit emigration to specified country.

(2) Every notification issued under this section shall be laid before both Chambers of the Indian Legislature as soon as may be after it is made.

14. A notification under section 10, section 11, section 12 or section 13 shall not affect any act done, offence committed, or legal proceedings commenced before the date on which such notification takes effect.

CHAPTER IV.

EMIGRATION FOR THE PURPOSE OF SKILLED WORK.

15. Emigration, for the purpose of skilled work, shall not be lawful except from a port from which emigration for the purpose of unskilled work is lawful and from such other ports as the Governor-General in Council may, by notification in the Gazette of India, specify in this behalf.

Ports from which emigration of skilled workers is lawful.

16. (1) Whoever desires to engage, or to assist, any person to emigrate for the purpose of skilled work shall apply for the permission of the Local Government having jurisdiction at the port from which such person is to depart, and shall state in his application—

Emigration of skilled workers.

(a) the number of persons whom he proposes to engage or assist;
(b) the place beyond the limits of India to which each such person and his dependents are to proceed;

(c) the accommodation to be provided for each such person and his dependents until their departure out of India and during the voyage.

(2) Whoever desires to engage any person for the purpose described in sub-section (1) shall, in addition to the information which he is required by that sub-section to supply in his application, further state therein—

(a) the provision to be made for the health and well-being of such person and his dependents during the period of the proposed engagement and for their repatriation at the end of such period;

(b) the terms of the agreement under which such person is to be engaged;

(c) the security in British India which he proposes to furnish for the due observance of such agreement and for the proper treatment of the person to be engaged and his dependents.

17. On receiving an application under section 16, the Local Government may, after such inquiry as it may deem necessary, grant the permission applied for on such terms and conditions (if any) and on payment of such fees (if any) as it thinks fit, or withhold such permission, and the decision of the Local Government shall be final.

18. (1) Before any person departs from British India in accordance with permission granted under section 17, the person by whom he has been engaged or assisted shall appear in person or by his duly authorised agent before the Protector of Emigrants at the port of embarkation with such first-mentioned person and with any persons intending to accompany him as his dependents.

Appearance of engaged persons before, and registration of names by, Protector of Emigrants.

(2) If it appears to the Protector of Emigrants—

(a) that permission to engage or assist such person has been duly obtained,

(b) in the case of an engagement, that the terms of the agreement under which such person has been engaged are in accordance with the terms of the permission granted and are understood by him, and

(c) that the conditions on which the permission was granted have been complied with,

he shall register in a book to be kept for the purpose such particulars concerning the person engaged or assisted and his dependents (if any) and concerning the person engaging or assisting him, and in such form, as the Local Government may prescribe.

19. Where such security as is referred to in sub-section (2) of section 16 has been furnished, the Local Government may, at any time after making such inquiry as it may deem necessary, pass orders in regard to the forfeiture of the security in whole or in part and the application of the same or any part thereof, and, on the expiry of the period to which the agreement relates and on being satisfied that no ground exists for forfeiting the security in whole or in part, order the return of the security or of any part thereof to the person by whom it was furnished or to his representative.

Delegation to Protector of Emigrants of authority to receive or dispose of applications.

20. The Local Government may, by notification in the local official Gazette, authorise a Protector of Emigrants to receive and dispose of applications made under this Chapter :

Provided that an appeal shall lie to the Local Government from every order passed by a Protector of Emigrants in exercise of the authority so conferred.

21. (1) Where the Governor-General in Council has reason to believe that sufficient grounds exist for prohibiting emigration of skilled workers to any country, he may, by notification in the Gazette of India, declare that such emigration to that country shall cease to be

Power to prohibit emigration of skilled workers.

lawful from a date specified in the notification ; and from that date such emigration to that country shall accordingly cease to be lawful.

(2) Every notification issued under this section shall be laid before both Chambers of the Indian Legislature as soon as may be after it is made.

Saving. 22. Nothing in this Chapter shall apply in any case in which a person engages another to accompany him out of India as his personal domestic servant.

CHAPTER V.

RULES.

Power of Local Government to make rules. 23. Subject to the control of the Governor-General in Council, the Local Government may, by notification in the local official Gazette, make rules consistent with this Act to prescribe the person by whom any doubt or dispute referred to in sub-section (2) of section 2 shall be determined and the procedure to be followed and the proof to be required in such cases, and to provide for any other matter which the Local Government is by this Act empowered to prescribe.

Power for the Governor General in Council to make rules. 24. (1) The Governor-General in Council may, by notification in the Gazette of India, and after previous publication, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the powers and duties of the several officers appointed by the Governor-General in Council under this Act ;

(b) the licensing, supervision and control of all persons employed in British India in connection with the inducement of persons to emigrate and with the conveyance and accommodation of persons so induced ;

(c) the establishment, supervision and regulation of any places of accommodation provided for emigrants and for their medical care while resident there ;

(d) the forms to be maintained and the returns to be submitted by persons licensed in accordance with rules framed under clause (b) ;

(e) the information to be furnished by persons licensed in accordance with rules framed under clause (b) to emigrants and the language in which such information is to be furnished ;

(f) the production and examination of emigrants before District Magistrates or such other authorities as may be appointed in this behalf ;

(g) the age below which persons of either sex may not emigrate except as dependents ;

(h) the accommodation, the provisions, fuel and other necessaries, the medical stores and staff, the life-saving and sanitary arrangements, and the records to be maintained on any ship specially chartered for the transport of emigrants ;

(i) the reception and the despatch to their homes of return emigrants ;

(j) the fees, if any, payable by Emigration Agents to Protectors of Emigrants for each emigrant departing from India ; and

(k) generally, the security, well-being and protection of emigrants both up to the date of their actual departure from India and on their return to India.

CHAPTER VI.

OFFENCES.

Unlawful emigration or inducement to emigrate. 25. (1) Whoever, except in conformity with the provisions of this Act or of the rules made under this Act, emigrates or attempts to emigrate shall be punishable with fine which may extend to fifty rupees.

(2) Whoever, except in conformity with the provisions of this Act or of the rules made under this Act,—

(a) makes, or attempts to make, any agreement with any person purporting to bind that person, or any other person, to emigrate, or

(b) induces, or attempts to induce, any person to emigrate or to attempt to emigrate or to leave any place for the purpose of emigrating, or

(c) causes any person engaged or assisted by him, after grant of the permission referred to in section 17, to depart by sea out of British India without registration of the particulars required by sub-section (2) of section 18,

shall be punishable with fine, which may extend to five hundred rupees.

(3) If any person commits an offence under this section, any police-officer may arrest him without warrant.

Fraudulently inducing to emigrate. 26. Whoever, by means of intoxication, coercion or fraud, causes or induces, or attempts to cause or induce, any person to emigrate, or enter into any agreement to emigrate, or leave any place with a view to emigrating, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

False representation of Government authority. 27. Whoever falsely represents that any emigrants are required by the Government or are to be engaged on behalf of the Government shall be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to five hundred rupees, or with both.

Sanction to prosecutions. 28. No prosecution shall be instituted for any offence under this Chapter except with the sanction of a Protector of Emigrants or of a person appointed under section 5 and empowered in this behalf or, where there is no Protector or person so appointed and empowered, of the District Magistrate :

Provided that no sanction shall be required when an offence has been committed in respect of an emigrant or an intended emigrant and the complaint is filed by such emigrant, or intended emigrant or, on behalf of such emigrant or intended emigrant, by the father, mother, husband, wife or guardian of such emigrant or intended emigrant or, if such emigrant or intended emigrant is a member of a joint Hindu family, by the manager of that family.

29. All the powers for the time being conferred by law on officers of sea-customs with regard to the searching and detention of vessels or otherwise for the prevention of smuggling on board thereof, may be exercised by those officers for the prevention of offences against this Act.

Power for Customs officer to search and detain for purposes of Act.

CHAPTER VII.

SUPPLEMENTAL.

30. (1) The departure by land out of British India of any person under, or with a view to entering into, an agreement to work for hire, or when assisted, otherwise than by a relative, so to depart for the purpose or with the intention of working for hire or engaging in agriculture, in any country beyond the sea, is prohibited.

Prohibition of departure by land under an agreement to work for hire in some country beyond the sea.

(2) Whoever departs, or attempts to depart, by land out of British India in contravention of this section, shall be deemed to have committed an offence under sub-section (1) of section 25.

(3) Whoever induces, or attempts to induce, any person to depart by land out of British India in contravention of this section shall be deemed to have committed an offence under sub-section (2) of section 25.

CHAPTER VIII.

SAVINGS AND REPEAL.

31. Nothing in this Act shall be deemed to apply to the departure out of British India of—

Application of Act.

(i) any person who is neither of Indian parentage nor a subject of a State in India, or

(ii) any person enrolled under the Indian Army Act, 1911.

VIII of 1911

32. Notwithstanding anything contained in this Act, the provisions of this Act shall not apply for a period of twelve months from the date of the commencement of this Act to persons emigrating to Ceylon, the Straits Settlements, or any protected Native State adjoining the Straits Settlements.

Saving.

33. The Indian Emigration Act, 1908, is hereby repealed.

Repeal.

Extradition (Amendment) Act, 1922.

(ACT XVI OF 1922.)

[Passed on the 30th September, 1922.]

An Act further to amend the Indian Extradition Act, 1903.

WHEREAS it is expedient further to amend the Indian Extradition Act, 1903; It is hereby enacted as follows:—

1. This Act may be called the Indian Extradition (Amendment) Act, 1922.

Short title.

XV of 1909.

Amendment of the
First Schedule, Act
XV of 1909.

2. In the First Schedule to the Indian Extradition Act, 1903, for the words "Desertion from any body of Imperial Service Troops" the following shall be substituted, namely:—

"Desertion from any unit of Indian State Forces declared by the Governor-General in Council, by notification in the Gazette of India, to be a unit desertion from which is an extradition offence."

Factories (Amendment) Act, 1922.

(ACT II OF 1922.)

[Passed on the 28th January, 1922.]

An Act further to amend the Indian Factories Act, 1911.

WHEREAS it is expedient further to amend the Indian Factories Act, 1911; It is hereby enacted as follows:—

Short title, extent
and commencement.

1. (1) This Act may be called the Indian Factories (Amendment) Act, 1922.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) It shall come into force on the first day of July, 1922.

XII of 1911.

Amendment of
section 2, Act XII
of 1911.

2. In section 2 of the Indian Factories Act, 1911, hereinafter referred to as the said Act,—

(a) in clause (1) for the word "fourteen" the word "fifteen" shall be substituted;

(b) for clause (3) the following clause shall be substituted, namely:—

"(3) 'factory' means—

(a) any premises wherein, or within the precincts of which, on any one day in the year not less than twenty persons are simultaneously employed and steam, water or other mechanical power or electrical power is used in aid of any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, for transport or for sale any article or part of an article; or

(b) any premises wherein, or within the precincts of which, on any one day in the year not less than ten persons are simultaneously employed and any such process is carried on, whether any such power is used in aid thereof or not which have been declared by the Local Government by notification in the local Official Gazette, to be a factory.

A declaration under clause (b) may be made in respect of any class of premises, or in respect of any particular premises";

(c) for clauses (8) and (9), the following clause shall be substituted, namely:—

"(8) 'week' means the period between midnight on Saturday night and midnight on the succeeding Saturday night."

Substitution of new section for section 3, Act XII of 1911.

3. For section 3 of the said Act, the following section shall be substituted, namely :—

Application of Act.

"3. Nothing in this Act shall apply to any mine subject to the operation of the Indian Mines Act, 1901."

Amendment of section 7, Act XII of 1911.

4. In section 7 of the said Act, for sub-section (2), the following sub-sections shall be substituted, namely :—

"(2) A certifying surgeon may revoke any certificate granted to a child under sub-section (1) if, in his opinion, the child is no longer fit for employment in a factory.

(3) Where a certifying surgeon refuses to certify that a person is fit for employment in a factory or revokes a certificate granted to a child in this behalf, he shall, if required by such person or child, or by the parent or guardian of such person or child, or by the manager of the factory in which such person or child desires to be employed, state in writing his reasons for such a refusal or revocation."

Amendment of section 8, Act XII of 1911.

5. In section 8 of the said Act,—

(a) for the words "any person practising medicine or surgery," the words "any registered practitioner" shall be substituted ;

(b) in the proviso for the words "after the first date" to the end of the section, the words "for a period of more than three months" shall be substituted ;

(c) after the proviso, the following *Explanation* shall be added, namely :—

"*Explanation.*—In this section the expression 'registered practitioner' means any person registered under the Medical Act, 1858, or any Act amending the same or under any Act of any Legislature in British India providing for the maintenance of a register of medical practitioners, and includes, in any area where no such last mentioned Act is in force, any person declared by the Local Government, by notification in the Local Official Gazette, to be a registered practitioner for the purposes of this section."

Insertion of new section 8-A in Act XII of 1911.

6. After section 8 in Chapter II of the said Act, the following section shall be inserted, namely :—

"8-A. Where an Inspector is of opinion that a child employed in a factory is no longer fit for employment, he may serve on the manager of the factory a notice requiring that such child shall cease to be employed until he has been re-examined by a certifying surgeon or by a registered practitioner authorised by a certifying surgeon in this behalf."

Compulsory medical examination.

Amendment of section 9, Act XII of 1911.

7. To section 9 of the said Act, the following clause shall be added, namely :—

"(d) the atmosphere shall not be rendered so humid by artificial means as to be injurious to the health of the persons employed therein."

Amendment of section 8, Act XII of 1911.

8. In clause (c) of sub-section (1) of section 18 of the said Act, after the word "machinery" the words "and electrical fittings including live wires and switches" shall be inserted.

Insertion of new section 18-A in Act XII of 1911.

9. After section 18 of the said Act, the following section shall be inserted, namely :—

Repairs to building or machinery.

"18-A. (1) If an Inspector is of opinion.

(a) that any factory or part thereof is in such a condition as to be dangerous to human life or safety, or

(b) that any part of the ways, works, machinery or plant used in a factory is in such a condition that it cannot be used without danger to human life, or safety,

he may serve on the manager of the factory an order in writing, specifying the measures which he considers necessary for removing the danger, and requiring him to carry them out before such date as may be specified therein.

(2) If, in the opinion of the Inspector, the use of any part of the ways, works, machinery or plant in a factory involves imminent danger to human life, he may serve on the manager of the factory an order in writing prohibiting the use thereof until it is duly repaired or altered."

Insertion of new sections 19-A and 19-B in Act XII of 1911.

10. After section 19 of the said Act, the following sections shall be inserted, namely :—

"19-A. Where, in the opinion of the Inspector, the presence in any factory or any part thereof of children, who, by reason of their age, cannot, under the provisions of this Act, be lawfully employed therein, involves danger to, or injury to the health of, such children, he may serve on the manager of such factory an order in writing prohibiting the admission of such children to the factory or part thereof.

Prohibition of employment of women and persons under eighteen years in certain processes.

19-B. No person under the age of eighteen years and no woman shall be employed in any factory in any of the operations specified in Part I of the Schedule, or, save in accordance with the regulation contained in Part II of the Schedule, in any operations involving the use of lead compounds."

Amendment of section 20, Act XII of 1911.

11. In the proviso to section 20 of the said Act, after the word "roof," the words or "to such height, as the Inspector may, in any particular case, specify" shall be inserted.

Substitution of new section for section 21, Act XII of 1911.

12. For section 21 of the said Act, the following section shall be substituted, namely :—

Rest periods in factories.

" 21. (1) In every factory there shall be fixed,—

(a) for each person employed on each working day—

(i) at intervals not exceeding six hours, periods of rest of not less than one hour, or

(ii) at the request of the employees concerned, periods of rest of not less than half an hour each so arranged that, for each period of six hours' work done, there shall be periods of rest of not less than one hour's duration in all, and that no person shall work for more than five hours continuously, and

(b) for each child working more than five and a half hours in any day, a period of rest of not less than half an hour.

(2) The period of rest under clause (b) shall be so fixed that no such child shall be required to work continuously for more than four hours."

Amendment of section 22, Act XII of 1911.

13. To clause (b) of sub-section (1) of section 22 of the said Act, the following proviso shall be added, namely :

" Provided that no such substitution shall be made as will result in any person working for more than ten consecutive days without a holiday for a whole day."

Amendment of section 23, Act XII of 1911.

14. (1) In clause (a) of section 23 of the said Act, for the word " nine " the word " twelve " shall be substituted.

(2) In clause (c) of section 23 of the said Act, for the word " seven " the word " six " shall be substituted.

(3) The provisions of clause (a) of section 23 of the said Act, as hereby amended, shall not apply to any child lawfully employed in a factory on or before the first day of July, 1921.

Amendment of section 25, Act XII of 1911.

15. In section 25 of the said Act, after the word " child " the words " or, save in such circumstances as may be prescribed, any other person " shall be inserted.

Amendment of section 26, Act XII of 1911.

16. In section 26 of the said Act, for the words " woman or child " and the words " woman and child " the word " person " shall be substituted.

Substitution of new section for section 27, Act XII of 1911.

17. For section 27 of the said Act, the following sections shall be substituted, namely :—

Limitation of working hours per week.

" 27. No person shall be employed in a factory for more than sixty hours in any one week.

Limitation of working hours per day.

28. No person shall be employed in any factory for more than eleven hours in any one day."

Substitution of
new Chapter for
Chapter V, Act XII
of 1911.

18. For Chapter V of the said Act, the following Chapter shall be substituted, namely :—

" CHAPTER V.

EXCEPTIONS.

Exceptions for
persons holding
positions of super-
vision, etc.

29. Nothing in any of the following sections, namely, 21, 22, 24, 26, 27 and 28, shall apply to persons who may, by rules made by the Local Government under this Act, be defined to be persons holding positions of supervision or management or to persons employed in a confidential capacity.

Exemptions.

30. (1) Where it is proved to the satisfaction of the Local Government—

(a) that any class of work in a factory is in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory ; or

(b) that the work of any class of workers is essentially intermittent ; or

(c) that there is in any class of factories any work which necessitates continuous production for technical reasons ; or

(d) that any class of factories supplies the public with articles of prime necessity which must be made or supplied every day ; or

(e) that in any class of factories the work performed, by the exigencies of the trade or by its nature, cannot be carried on except at stated seasons or at times dependent on the irregular action of natural forces ;

the Local Government may, subject to the control of the Governor-General in Council, by notification in the Local Official Gazette, exempt on such conditions, if any, as it may impose—

in case (a) such class of work from all or any of the provisions of sections 27 and 28 ;

in case (b) work of the nature described from all or any of the provisions of sections 22, 27 and 28 ;

in case (c) work of the nature described from the provisions of sections 21 and 22 ;

in cases (d) and (e) such class of factories from the provisions of section 22.

(2) The Local Government may, by general or special order, exempt for such period as may be specified in the order and on such conditions, if any, as it may impose, any factory from all or any of the provisions of sections 21, 22, 27 and 28, on the ground that such exemption is necessary in order to enable such factory to deal with an exceptional press of work.

(3) In such circumstances and subject to such conditions as may be prescribed, nothing in sections 21, 22, 27 or section 28 shall apply to work on urgent repairs.

31. Where, under the provisions of sub-section 1 of section 30, any factory has been exempted from the provisions of section 27, every person employed in such factory for more than sixty hours in any one week shall be paid, in respect of the overtime, at a rate which shall be at least one and a quarter times the rate at which he is normally paid.

32. The Local Government may, subject to the control of the Governor-General in Council, by notification in the local official Gazette, exempt any indigo factory or any factory situated on, and used solely for the purposes of, a tea or coffee plantation, from all or any of the provisions of sections 21 and 22, on such conditions, if any, as it may impose."

49. In sub-section (1) of section 33 of the said Act, for clauses (a) and (b) the words, "on or before the date on which the factory commences working as such" shall be substituted.

Amendment of section 38, Act XII of 1911.

20. For section 35 of the said Act, the following section shall be substituted, namely :—

35. In every factory there shall be kept, in the prescribed form, a register of all the persons employed in such factory, of their hours of work and of the nature of their respective employment.

Amendment of section 36, Act XII of 1911.

21. In section 36 of the said Act,—

(a) for clause (b) of sub-section (1), the following shall be substituted, namely :—

"(b) the periods of rest fixed under section 21".

(b) in clause (d) of sub-section (1) for the words "women and children, respectively, if not employed in shifts," the words "all persons employed" shall be substituted ;

(c) after clause (d) of sub-section (1), the following shall be inserted, namely :—

"(e) the weekly holidays fixed under section 22".

Amendment of section 37, Act XII of 1911.

22. In sub-section (2) of section 37 of the said Act,—

(a) in clause (g) after the word "ventilation," the words "and artificial humidification" shall be inserted ;

(b) in clause (j), after the word "machinery," the words "and electrical fittings" shall be inserted ;

(c) after clause (j), the following clause shall be inserted, namely :—

"(jj) the definition of 'persons' under section 29 who shall be deemed to be persons holding positions of supervision or management or persons employed in a confidential capacity."

Insertion of new section 38 in Act XII of 1911.

23. After section 38 of the said Act, the following section shall be inserted, namely :—

' Rules of prevention of anthrax.

" 38-A. The Governor-General in Council may make rules for the adequate disinfection of wool used in factories which may be infected with anthrax spores."

Amendment of section 39, Act XII of 1911.

24. In section 39 of the said Act,—

(a) in sub-section (1) for the word and figures " section 38," the words and figures " sections 38 and 38-A " shall be substituted ;

(b) in sub-section (2), for the words and figures " sections 37 and 38," the words and figures " sections 37, 38 and 38-A " shall be substituted.

Amendment of section 41, Act XII of 1911.

25. In section 41 of the said Act,—

(a) in clause (f), for the words " machinery or boilers," the words " machinery, electrical fittings or boilers " shall be substituted ;

(b) in clause (g), for the words and figures " or section 18," the words and figures " section 18, section 18-A or section 19-B " shall be substituted ;

(c) for the words " two hundred," the words " five hundred " shall be substituted.

Amendment of section 43, Act XII of 1911.

26. In section 43 of the said Act, for the words " two hundred " the words " five hundred " shall be substituted.

Insertion of new section 43-A in Act XII of 1911.

27. After section 43 of the said Act, the following section shall be inserted, namely :—

" 43-A. Where under this Act a Criminal Court imposes a fine or confirms in appeal, revision or otherwise, a sentence of fine in respect of an offence causing bodily injury or death, the Court may, when passing judgment, order the whole or any part of the fine recovered, to be paid

as compensation to the person injured or, in the case of his death, to his legal representatives :

Provided that, if the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal has been presented, before the decision of the appeal."

Amendment of section 48, Act XII of 1911.

28. In section 48 of the said Act, at the end of sub-section (2), the words and figures " or section 44 " shall be added.

Amendment of section 50, Act XII of 1911.

29. In section 50 of the said Act,—

(a) in sub-section (1), for the words and figures " or section 18," the words and figures " section 18, section 18-A or section 19-A " shall be substituted ;

(b) after sub-section (3), the following sub-section shall be inserted, namely :

" (4) Except in the case of an appeal against an order under section 19-A, the appellate authority may, on the application of the appellant, suspend the operation of an order of the Inspector pending the decision of the appeal. But where no such suspension has been granted, such order shall be complied with notwithstanding the fact that an appeal has been presented."

Amendment of
section 51, Act XII
of 1911.

30. In sub section (2) of section 51 of the said Act, for the words and figures "section 24, clause (a) and section 29," the words and figures "and section 24, clause (a)" shall be substituted.

Amendment of
section 52, Act XII
of 1911.

31. In section 52 of the said Act, for the words and figures "section 28 and section 32," the words and figures "section 27, section 28 and section 31" shall be substituted.

Amendment of
Schedules to Act
XII of 1911.

32. For Schedules I and II to the said Act, the Schedule contained in Schedule I to this Act shall be substituted.

33. The provisions of the said Act specified in Schedule II are hereby repealed to the extent shown in the second column thereof.

SCHEDULE I.

SCHEDULE TO BE SUBSTITUTED IN THE INDIAN FACTORIES ACT, 1911.

(See section 32.)

THE SCHEDULE.

(See section 19-B.)

PART I.

1. Work at a furnace where the reduction or treatment of zinc or lead ores is carried on :

2. The manipulation, treatment, or reduction of ashes containing lead, the desilvering of lead or the melting of scrap lead or zinc :

3. The manufacture of solder or alloys containing more than ten per cent. of lead :

4. The manufacture of any oxide, carbonate, sulphate, chromate, acetate, nitrate, or silicate of lead :

5. Mixing or pasting in connection with the manufacture or repair of electric accumulators :

6. The cleaning of work-rooms where any of the processes aforesaid are carried on.

PART II.

1. Where dust or fume from a lead compound is produced in the process, provision must be made for drawing the fume or dust away from

the persons employed by means of an efficient exhaust draught so contrived as to operate on the dust or fume as nearly as may be at its point or origin :

2. The persons employed must undergo the prescribed medical examination at the prescribed intervals, and the prescribed record must be kept with respect to their health ;

3. No food, drink, or tobacco, shall be brought into, or consumed in, any room in which the process is carried on, and no person shall be allowed to remain in any such room during meal times ;

4. Adequate protective clothing in a clean condition shall be provided by the employer and worn by the persons employed ;

5. Such suitable cloak room, mess-room and washing accommodation as may be prescribed shall be provided for the use of the persons employed ;

6. The rooms in which the persons are employed, and all tools and apparatus used by them, shall be kept in a clean condition."

SCHEDULE II.

(See section 33.)

REPEALS.

Section 2	... Clause (4).
Section 22	... Sub-sections (2), (3) and (4).
Section 36	... Sub-section (4),
Section 38	... The words "from time to time."
Section 55	... The whole.
Section 59	... Ditto.

Factories Act, 1922.

(ACT II OF 1922.)

[Amended by Act XI of 1923.]

S. 25 (b)—[Amended by Act XI of 1923 (*Repealing and Amending Act*)].

For the figures and letter " 19-B " the figures and letter " 19-A " shall be substituted.

Factories (Amendment Act), 1923.

(ACT IX OF 1923).

[Passed on the 5th March, 1923.]

An Act further to amend the Indian Factories Act, 1911.

XII of 1911 WHEREAS it is expedient further to amend the Indian Factories Act, 1911 ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Indian Factories (Amendment) Act, 1923.

Addition of new sub-section to section 22, Act XII of 1911.

2. To section 22 of the Indian Factories Act, XII of 1911 (hereinafter referred to as the said Act), the following sub-section shall be added, namely :—

"(2) where, in accordance with the provisions of sub-section (1), any person is employed on a Sunday in consequence of his having had a holiday on one of the three days preceding that Sunday, that Sunday shall, for the purpose of calculating the weekly hours of work of such person, be deemed to be included in the preceding week."

Amendment of section 37, Act XII of 1911.

3. In section 37 of the said Act, for clause (j) of sub-section (2) the following clause shall be substituted, namely :—

"(j) the parts of the machinery and electrical fittings to be kept fenced in accordance with section 18, sub-section (1), clause (c), and the provisions to be made for the protection from danger of persons employed in attending to the machinery, electrical fittings or boilers."

Amendment of section 41, Act XII of 1911.

4. In clause (g) of section 41 of the said Act, for the figures and letter "19-B" the figures and letter "19-A" shall be substituted.

Amendment of section 50, Act XII of 1911.

5. Sub-section (2) of section 50 of the said Act shall be omitted.

Glanders and Farcy (Amendment) Act, 1920.

(ACT IX OF 1920.)

[Passed on the 4th March, 1920.]

An Act further to amend the law relating to Glanders and Farcy.

WHEREAS it is expedient further to amend the law relating to Glanders and Farcy ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Glanders and Farcy (Amendment) Act, 1920.

Extension of Act to camels.

2. In section 2 (2) of the Glanders and Farcy Act, 1899, the word "camels" shall be inserted between the words "to" and "asses."

XIII of 1899

Substitution of new section for section 3, Act XIII of 1899.

3. For section 3 of the same Act the following section shall be substituted, namely :—

Application of Act to local areas by Local Government.

"3. (1) The Local Government may, by notification, in the local official Gazette, apply this Act or any provision of this Act to any local area, to be specified in such notification, within the province.

(2) In any such notification the Local Government may further direct that the Act or any provision so applied shall apply in respect of—

(a) all or any of the diseases mentioned or specified in a notification under section 2, sub-section (1),

(b) all animals or any class of animals mentioned in section 2, sub-section (2)."

Identification of Prisoners Act, 1920.

(ACT XXXIII OF 1920).

[Passed on the 9th September, 1920.]

An Act to authorise the taking of measurements and photograph of convicts and others.

WHEREAS it is expedient to authorise the taking of measurements and photographs of convicts and others; It is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may be called the Identification of Prisoners Act, 1920; and

(2) It extends to the whole of British India, including British Baluchistan, the Sonthal Parganas and the district of Angul.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "measurements" include finger impressions and foot-print impressions;

(b) "police officer" means an officer in charge of a police-station a police officer making an investigation under Chapter XIV of the Code of Criminal Procedure, 1898, or any other police officer not below the rank of sub-inspector; and

(c) "prescribed" means prescribed by rules made under this Act.

Taking of measurements, etc., of convicted persons. 3. Every person who has been—

(a) convicted of any offence punishable with rigorous imprisonment for a term of one year or upwards, or of any offence which would render him liable to enhanced punishment on a subsequent conviction; or

(b) ordered to give security for his good behaviour under section 118 of the Code of Criminal Procedure, 1898,

shall, if so required, allow his measurements and photographs to be taken by a police officer in the prescribed manner.

Taking of measurements, etc., of non-convicted persons. 4. Any person who has been arrested in connexion with an offence punishable with rigorous imprisonment for a term of one year or upwards shall, if so required by a police officer, allow his measurements to be taken in the prescribed manner.

5. If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the Code of Criminal Procedure, 1898, it is expedient to direct any person

V of 1898. Power of Magistrate to order a person to be measured or photographed.

to allow his measurements or photograph to be taken, he may make an order to that effect, and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken, as the case may be, by a police officer :

Provided that no order shall be made directing any person to be photographed except by a Magistrate of the first class :

Provided further, that no order shall be made under this section unless the person has at some time been arrested in connexion with such investigation or proceeding.

6. (1) If any person who under this Act is required to allow his measurements or photograph to be taken resists or refuses to allow the taking of the same, it shall be lawful to use all means necessary to secure the taking thereof.

Resistance to the taking of measurements, etc.

(2) Resistance to or refusal to allow the taking of measurements or photographs under this Act shall be deemed to be an offence under section 186 of the Indian Penal Code.

XLV of 1860.

7. Where any person who, not having been previously convicted of an offence punishable with rigorous imprisonment for a term of one year or upwards has had his measurements taken or has been photographed in accordance with the provisions of this Act is released without trial or discharged or acquitted by any Court, all measurements and all photographs (both negatives and copies) so taken shall, unless the Court or (in a case where such person is released without trial) the District Magistrate or Sub-divisional Officer for reasons to be recorded in writing otherwise directs, be destroyed or made over to him.

Destruction of photographs and records of measurements, etc., on acquittal.

8. (1) The Local Government may make rules for the purpose of carrying into effect the provisions of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for—

(a) restrictions on the taking of photographs of persons under section 5 ;

(b) the places at which measurements and photographs may be taken ;

(c) the nature of the measurements that may be taken ;

(d) the method in which any class or classes of measurements shall be taken ;

(e) the dress to be worn by a person when being photographed under section 3 ; and

(f) the preservation, safe custody, destruction and disposal of records of measurements and photographs.

9. No suit or other proceeding shall lie against any person for anything done or intended to be done, in good faith under this Act or under any rule made thereunder.

Bar of suits.

Immigration into India. Act, 1924.

(ACT III OF 1924.)

[Passed on the 1st March, 1924.]

An Act to regulate the entry into and residence in British India of persons domiciled in other British Possessions.

WHEREAS it is expedient to make provision for regulating the entry into and residence in British India of persons domiciled in the British Possessions on a basis of reciprocity; It is hereby enacted as follows :—

Short title, commencement and extent.

1. (1) This Act may be called the Immigration into India Act, 1924.

(2) It shall come into force on such date as the Governor-General in Council may notify in the Gazette of India.

(3) It shall extend to the whole of British India including British Baluchistan.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "British Possession" means any part of His Majesty's Dominions other than British India, the United Kingdom and Ireland, and includes Protectorates and territories which are or may be administered by a Dominion as a mandatory on behalf of the League of Nations;

(b) "entry" includes landing at any port in British India during the period of the ship's stay on her way to a destination outside British India.

3. The Governor-General in Council may make rules for the purpose of securing that persons not being of Indian origin, domiciled in any British Possession, shall have no greater rights and privileges, as regards entry into and residence in British India, than are accorded by the law and administration of such Possession to persons of Indian domicile.

Rules as regards entry into and residence in British India.

Power to make rules.

4. The Governor-General in Council may, without prejudice to the generality of the powers contained in section 3 of this Act, make rules—

(a) to provide for the establishment of a suitable agency to administer the rules and to define its functions and powers;

(b) to provide suitable penalties for the contravention of such rules or attempt to contravene them, or the abetment of such contravention; and

(c) to authorise the arrest of any person contravening or reasonably suspected of contravening any such rule, and to prescribe the duties of public servants and others in regard to such arrests.

5. If any person alleged to be domiciled in any British Possession and to be subject to the provisions of this Act raises the plea that he is not so domiciled or that the provisions of the said Act do not apply to him, the onus of proving the truth of such plea shall lie on the aforesaid person.

Person claiming exemption to establish case.

Income-tax Act, 1922.

(ACT XI OF 1922).

*[Passed on the 5th March, 1922.]**[Amended by Acts XV of 1923, XXVII of 1923 and XI of 1924.]**An Act to consolidate and amend the law relating to Income-tax and Super-tax.*

WHEREAS it is expedient to consolidate and amend the law relating to Income-tax and Super-tax; It is hereby enacted as follows :—

Short title, extent
and commence-
ment.

1. (1) This Act may be called the Indian Income-tax Act, 1922.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, and applies also, within the dominions of Princes and Chiefs in India in alliance with His Majesty, to British subjects in those dominions who are in the service of the Government of India or of a local authority established in the exercise of the powers of the Governor-General in Council in that behalf, and to all other servants of His Majesty in those dominions.

(3) It shall come into force on the first day of April, 1922.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) " agricultural income " means—

(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in British India or subject to a local rate assessed and collected by officers of Government as such;

(b) any income derived from such land by—

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (ii) :

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in sub-clauses (ii) and (iii) of clause (b) is carried on :

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind by reason of his connection with the land, requires as a dwelling-house, or as a store-house, or other out-building ;

(2) "assessee" means a person by whom Income-tax is payable;

(3) "Assistant Commissioner" means a person appointed to be an Assistant Commissioner of Income-tax under section 5;

(4) "business" includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;

[1] (4-a) "the Central Board of Revenue" means the Central Board of Revenue constituted under the Central Board of Revenue Act, IV of 1924.

(5) "Commissioner" means a person appointed to be a Commissioner of Income-tax under section 5;

(6) "company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession, and includes any foreign association carrying on business in British India whether incorporated or not, and whether its principal place of business is situate in British India or not, which the Central Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act;

(7) "Income-tax Officer" means a person appointed to be an Income-tax officer under section 5;

(8) "Magistrate" means a Presidency Magistrate or a Magistrate of the first class, or a Magistrate of the second class specially empowered by the Local Government to try offences against this Act;

(9) "person" includes a Hindu undivided family;

(10) "prescribed," means prescribed by rules made under this Act;

(11) "previous year" means—

(a) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up:

Provided that, if this option has once been exercised by the assessee, it shall not again be exercised so as to vary the meaning of the expression, "previous year" as then applicable to such assessee except with the consent of the Income-tax Officer and upon such conditions as he may think fit; or

(b) in the case of any person, business or company or class of person, business or company, such period as may be determined by the Board of Inland Revenue or by such authority as the Board may authorise in this behalf:

(12) "principal officer," used with reference to a local authority or a company or any other public body or any [2] association, means—

(a) the secretary, treasurer, manager or agent of the authority, company, body or association, or

Leg. Changes :—[1] Sub-Cl. (4-a) was inserted by Act XI of 1924. [2] The word 'any' was inserted by Act XI of 1924.

(b) any person connected with the authority, company, body or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof ;

(13) " public servant " has the same meaning as in the Indian Penal XLV of 1860. Code ;

(14) " registered firm " means a firm constituted under an instrument of partnership specifying the individual shares of the partners of which the prescribed particulars have been registered with the Income-tax Officer in the prescribed manner ;

(15) " total income " means total amount of income, profits and gains from all sources to which this Act applies computed in the manner laid down in section 16 ; and

•(16) " unregistered firm " means a firm which is not a registered firm.

* * * * *

CHAPTER IV.

DEDUCTIONS AND ASSESSMENT.

18. (1) Income-tax shall, unless otherwise prescribed in the case of any security of the Government of India, be leviable in advance by deduction at the time of payment in respect of income chargeable under the following heads :—

- (i) " Salaries " ; and
- (ii) Interest on securities. "

(2) Any person responsible for paying any income chargeable under the head " Salaries " shall, at the time of payment, deduct income-tax on the amount payable at the rate applicable to the estimated income of the assessee under this head :

Provided that such person may, at the time of making any deduction, increase or reduce the amount to be deducted under this sub-section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct.

(3) The person responsible for paying any income chargeable under the head " Interest on securities " shall, at the time of payment, deduct income-tax on the amount of the interest payable at the maximum rate.

(4) All sums deducted in accordance with the provisions of this section shall, for the purpose of computing the income of an assessee, be deemed to be income received.

(5) Any deduction made in accordance with the provisions of this section shall be treated as a payment of income-tax on behalf of the person from whose income the deduction was made, or of the owner of the security, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act :

Provided that, if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund.

(6) All sums deducted in accordance with the provisions of this section shall be paid within the prescribed time by the person making the deduction to the credit of the Government of India, or as the Central Board of Revenue directs.

(7) If any such person does not deduct and pay the tax as required by this section, he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

(8) The power to levy by deduction under this section shall be without prejudice to any other mode of recovery.

(9) Every person deducting income-tax in accordance with the provisions of sub-section (3) shall, at the time of payment of interest, furnish to the person to whom the interest is paid a certificate to the effect that income-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed.

* * * * *

20. The principal officer of every company shall, at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will pay income-tax on the profits which are being distributed, and specifying such other particulars as may be prescribed.

Certificate by
company to share-
holders receiving
dividends.

21. The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association, and every private employer shall prepare, and, within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form, a return in writing showing—

Annual return.

(a) the name and, so far as it is known, the address, of every person who was receiving on the said 31st day of March, or has received during the year ending on that date, from the authority, company, body, association or private employer, as the case may be, any income chargeable under the head "Salaries" of such amount as may be prescribed ;

(b) the amount of the income so received by each such person, and the time or times at which the same was paid ;

(c) the amount deducted in respect of income-tax from the income of each such person.

22. (1) The principal officer of every company shall prepare, and, on or before the fifteenth day of June in each year, furnish to the Income-tax Officer a return, in the prescribed form and verified in the prescribed manner, of the total income of the company during the previous year :

Return of income.

Provided that the Income-tax Officer may, in his discretion, extend the date for the delivery of the return in the case of any company or class of companies.

(2) In the case of any person other than a company whose total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer shall serve a notice upon him requiring him to furnish, within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income during the previous year.

(3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either of those sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made, and any return so made shall be deemed to be a return made in due time under this section.

(4) The Income-tax Officer may serve on the principal officer of any company or on any person upon whom a notice has been served under sub-section (2) a notice requiring him, on a date to be therein specified, to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require :

Provided that the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

* * * * *

30. (1) Any assessee objecting to the amount or rate at which he is assessed under section 23 or section 27, or denying his liability to be assessed under this Act, or objecting to a refusal of an Income-tax Officer to make a fresh assessment under section 27, or to any order against him under sub-section (2) of section 25 or section 28, made by an Income-tax Officer, may appeal to the Assistant Commissioner against the assessment or against such refusal or order :

Provided that no appeal shall lie in respect of an assessment made under sub-section (4) of section 23, or under that sub-section read with section 27.

(2) The appeal shall ordinarily be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to, or of the date of the refusal to make a fresh assessment under section 27, as the case may be; but the Assistant Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

* * * * *

32. (1) Any assessee objecting to an order passed by an Assistant Commissioner under section 28 or to an order enhancing his assessment under sub-section (3) of section 31, may appeal to the Commissioner within thirty days of the making of such order.

Appeals against
orders of Assistant
Commissioner.

(2) The appeal shall be in the prescribed form, and shall be verified in the prescribed manner.

(3) In disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit.

* * * * *

V of 1908. 37. The Income-tax Officer, Assistant Commissioner and Commissioner shall, for the purposes of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely :—

(a) enforcing the attendance of any person and examining him on oath or affirmation ;

(b) compelling the production of documents ; and

(c) issuing commissions for the examination of witnesses ;

and any proceeding before an Income-tax Officer, Assistant Commissioner or Commissioner under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 of the Indian

XLV of 1860. Penal Code.

Power to call for information.

38. The Income-tax Officer or Assistant Commissioner may, for the purposes of this Act,—

(1) require any firm, or Hindu undivided family to furnish him with a return of the members of the firm, or of the manager or adult male members of the family, as the case may be, and of their addresses ;

(2) require any person whom he has reason to believe to be a trustee, guardian, or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, or agent, and of their addresses.

Power to inspect the register of members of any company. 39. The Income-tax Officer or Assistant Commissioner, or any person authorised in writing in this behalf by the Income-tax Officer or Assistant Commissioner, may inspect and, if necessary, take copies, or cause copies to be taken, of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register.

* * * * *

Mode and time of recovery. 46. (1) When an assessee is in default in making a payment of income-tax, the Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty.

(2) The Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land-revenue.

(3) In any area with respect to which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the province, the Income-tax Officer may proceed to recover the amount due by such process.

(4) The Commissioner may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (3).

(5) If any assessee is in receipt of any income chargeable under the head "Salaries," the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears due from such assessee, and such person shall comply with any such requisition, and shall pay the sums so deducted to the credit of the Government of India, or as the Central Board of Revenue directs.

(6) The Local Government may direct, with respect to any specified area, that income-tax shall be recovered therein, with, and as an addition to, any municipal tax or local rate by the same person and in the same manner as the municipal tax or local rate is recovered.

(7) Save in accordance with the provisions of sub-section (1) of section 42, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the year in which any demand is made under this Act.

* * * * *

49. (1) If any person who has paid Indian income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid United Kingdom income-tax for that year in respect of the same part of his income, and that the rate at which he was entitled to, and has obtained, relief under the provisions of section 27 of the Finance Act, 1920, is less than the Indian rate of tax charged in respect of that part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Indian rate of tax and the rate at which he was entitled to, and obtained, relief under that section : 10 & 11 Geo. V, Ch. 18.

Provided that the rate at which the refund is to be given shall not exceed one-half of the Indian rate of tax.

(2) In sub-section (1)—

(a) the expression "Indian Income-tax" means income-tax and super-tax charged in accordance with the provisions of this Act ;

(b) the expression "Indian rate of tax" means the amount of the Indian income-tax divided by the income on which it was charged ;

(c) the expression "United Kingdom income-tax" means income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts.

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CHAPTER VIII.

OFFENCES AND PENALTIES.

Failure to make payments or deliver returns or statements or allow inspection.

51. If a person fails without reasonable cause or excuse—

(a) to deduct and pay any tax as required by section 18 or under sub-section (5) of section 46 ;

(b) to furnish a certificate required by sub-section (9) of section 18 or by section 20 to be furnished ,

(c) to furnish in due time any of the returns mentioned in section 21, section 22, or section 38 ;

(d) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (4) of section 22, such accounts and documents as are referred to in the notice ;

(e) to grant inspection or allow copies to be taken in accordance with the provisions of section 39,

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

52. If a person makes a statement in a verification mentioned in section 22, or sub-section (3) of section 30, or sub-section (2) of section 32 which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be deemed to have committed the offence

False statement in declaration.
XLV of 1860, described in section 177 of the Indian Penal Code.

53. (1) A person shall not be proceeded against for an offence under section 51 or section 52 except at the instance of the Assistant Commissioner.

(2) The Assistant Commissioner may stay any such proceeding or compound any such offence.

54. (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

I of 1872,

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine :

Provided that nothing in this section shall apply to the disclosure—

(a) of any such particulars for the purposes of a prosecution under section 193 of the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act, or XLV of 1860

(b) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act, or

(c) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or

(d) of such facts, to an authorised officer of the United Kingdom, as may be necessary to enable relief to be given under section 27 of the Finance Act, 1920, or a refund to be given under section 49 of this Act : 10 & 11 Geo. V, Ch. 18.

Provided, further, that no prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

* * * * *

Inland Steam Vessels (Amendment) Act, 1920.

(ACT VI OF 1920.)

[Passed on the 25th February, 1920.]

[Amended by Repealing and Amending Act XI of 1923]

An Act to amend the Inland Steam-vessels Act, 1917.

WHEREAS it is expedient to amend the Inland Steam-vessels Act, I of 1917, 1917; It is hereby enacted as follows :—

Short title. 1. This Act may be called the Inland Steam-vessels (Amendment) Act, 1920.

Insertion of new section 22-A in Act I of 1917. 2. After section 22 of the Inland Steam-vessels Act, 1917 (hereinafter referred to as the said Act), the following section shall be inserted, namely :—

Licenses. "22-A. (1) The Local Government may also, in its discretion, grant—

(a) to a person who is in possession of a second-class master's certificate granted under section 21 or section 22, and has, by virtue of such certificate, acted as master of an inland steam-vessel having engines of forty or more nominal horse-power for a period of not less than five years, or

(b) to a person who is in possession of a first-class engine-driver's certificate granted under section 21 or section 22, or an engine-driver's certificate granted under the Indian Steam-ships Act, 1884, and has, by virtue of such certificate, served as an engine-driver of an inland steam-vessel having engines of not less than seventy nominal horse-power for five years, for not less than two and a half years, of which period he has been the engine-driver of such vessel within the meaning of section 26,

a license authorising such person to act as master or engineer, as the case may be, of any inland steam-vessel having engines of one hundred

and seventy nominal horse-power or of such less nominal horse-power as * [1] such Government may deem fit.

(2) Any such license shall remain in force only for such time as the person holding the same is in possession of and entitled to a master's, or an engine-driver's certificate, as the case may be, of the nature referred to in sub-section (1) :

Provided that the Local Government may, in its discretion, suspend, cancel or vary the conditions of any such license."

Amendment of section 23, Act I of 1917. 3. In section 23 of the said Act, after the word "service" the words "and every license" shall be inserted, and after the words "entitled to the certificate" the words "or license" shall be inserted.

Amendment of section 24, Act I of 1917. 4 In section 24 of the said Act, after the word "certificate" in each place where it occurs, the words "or license" shall be inserted.

Amendment of section 25, Act I of 1917. 5. In section 25 of the said Act—

(1) for the word "eighty" the words "one hundred" shall be substituted.

(2) In clause (a), after the words and figures "Merchant Shipping Act, 1894," the following words shall be inserted, namely :—

"or a master's license granted under section 22-A and applicable to such vessel and voyage."

(3) At the end of clause (b) the following words shall be added, namely :—

"or an engine-driver's license granted under section 22-A and applicable to such vessel and voyage."

Amendment of section 26, Act I of 1917. 6. In section 26 of the said Act, for the word "thirty" the word "forty" and for the word "eighty" the words "one hundred," shall be substituted.

Amendment of section 27, Act I of 1917. 7. In section 27 of the said Act, for the word "thirty" the word "forty" shall be substituted.

Insertion of new section 30-A in Act I of 1917. 8. After section 30 of the said Act the following section shall be inserted, namely :—

Power for Local Government to make rules as to grant of licenses. "30-A. The Local Government may also make rules to regulate the granting of licenses under section 22-A, and may by such rules prescribe in particular—

(a) the fees (if any) to be paid for such licenses, and

(b) the forms in which such licenses are to be framed and the authority by whom and the manner in which copies are to be kept and recorded under section 23."

Leg. Changes :—[1] The word "to" was omitted by the Repealing and Amending Act, XI of 1938.

Amendment of section 31, Act I of 1917. 9. (1) In section 31 of the said Act, after the word "service" where it first occurs the words "and licenses" shall be inserted.

(2) In clause (ii) of the said section, after the word "serang" the words "and a license" shall be inserted.

(3) In the provisos to the said section, after the word "certificate" in each place where it occurs, the words "or license" shall be inserted.

Amendment of section 59, Act I of 1917. 10. (1) In clause (a) of section 59 of the said Act, after the words "engine-driver's certificate" the words "or a master's or engine-driver's license" shall be inserted.

(2) In clause (b) of the said section, after the words "such certificate," the words "or license" shall be added.

Lepers (Amendment) Act, 1920.

(ACT XXII OF 1920.)

[Passed on the 31st August, 1920.]

An Act further to amend the Lepers Act, 1898.

WHEREAS it is expedient further to amend the Lepers Act, 1898; III of 1898 It is hereby enacted as follows:—

Short title. 1. This Act may be called the Lepers (Amendment) Act, 1920.

Amendment of section 1, Act III of 1898. 2. In sub-section (4) of section 1 of the Lepers Act, 1898 (hereinafter referred to as the said Act), the words "and may in like manner amend or cancel any such notification" shall be omitted. III of 1898

Amendment of section 2, Act III of 1898. 3. In clause (1) of section 2 of the said Act, the words "in whom the process of ulceration has commenced" shall be omitted.

Substitution of new section for section 3, Act III of 1898. 4. For section 3 of the said Act, the following section shall be substituted, namely:—

"3. The Local Government may, by notification in the official Gazette, appoint any place to be a leper asylum if it is satisfied that adequate arrangements have been made or will be made for the accommodation and medical treatment of lepers therein, and may, by a like notification, specify the local areas from which lepers may be sent to such asylum."

Amendment of section 6, Act III of 1898. 5. In section 6 of the said Act,—

(a) in sub-section (1) after the words "any police-officer" the words "or any other person specially empowered by the Local Government by order in writing in this behalf" shall be inserted; and

(b) in sub-section (2) after the words "such police-officers" the words "or other person" shall be inserted.

6. In section 12 of the said Act, for the words "by any police-officer without a warrant," the words "without a warrant by any police-officer or by any other person especially empowered by the Local Government by order in writing in this behalf" shall be substituted.

Amendment of
section 12, Act III of
1898.

Lunacy (Amendment) Act, 1922.

(ACT VI OF 1922.)

[Passed on the 1st March, 1922.]

An Act further to amend the Indian Lunacy Act, 1912.

WHEREAS it is expedient further to amend the Indian Lunacy Act, 1912; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Indian Lunacy (Amendment) Act, 1922.

Amendment of
section 3, Act IV of
1912.

2. In section 3 of the Indian Lunacy Act, 1912 (hereinafter referred to as the said Act),—

(a) in clause (1), after the word 'asylum' where it occurs for the second time, the words 'or mental hospital' shall be inserted; and

(b) to clause (2) the following shall be added, namely:—

"together with any other charges specified in this behalf by the Governor-General in Council, in exercise of any power conferred upon him by this Act."

Amendment of
section 84, Act IV
of 1912.

3. To section 84 of the said Act, the following words shall be added, namely:—

"if it is satisfied that provision has been or will be made for the curative treatment therein of persons suffering from mental diseases."

Insertion of new
section 84-A in Act
IV of 1912.

4. After section 84 of the said Act, the following section shall be inserted, namely:—

"84-A. If in any licensed asylum no provision for curative treatment has been made, or the Local Government considers that the provision made is insufficient, the Local Government may require the person in charge of the asylum to take such measures for making or supplementing such provision as it may deem necessary, and, if such person does not comply with the requisition within a reasonable time, the Local Government may revoke the license."

Power to cancel
license if provision
for curative treat-
ment is insufficient.

"necessary, and, if such person does not comply with the requisition within a reasonable time, the Local Government may revoke the license."

Insertion of new
sections 89-A and 89-
B in Act IV of 1912.

8. After section 89 of the said Act, the following sections shall be inserted, namely :—

"89-A. The Governor-General in Council may, by general or special order, prescribe the amount payable on account of the cost of maintenance of lunatics detained in any asylum for the cost of whose maintenance any Local Government is liable, and the proportions in which such amount shall be payable respectively by the Local Governments so liable. Any such amount may include charges on account of the upkeep of the asylum and of the capital cost of the establishment of the asylum.

Incidence of costs
of maintenance
payable by Govern-
ment.

89-B. (1) When under the provisions of this Act the cost of the maintenance of a lunatic is payable by the Government, then such cost shall be payable—

(a) in the case of a lunatic not domiciled in British India, by the Local Government of the province in which the reception order or the order under section 25, as the case may be, was made; and

(b) in the case of a lunatic domiciled in British India, by the Local Government of the province in which the lunatic has last resided for a period of five years before the reception order or the order under section 25, as the case may be, was made; or, if the lunatic has not been resident in any one province for such period, by the Local Government of the province in which such order was made.

(2) If any question arises as to the incidence of the cost of maintenance of any lunatic under sub-section (1), the question shall be referred to the Governor-General in Council, and his decision thereon shall be final."

Lunacy Act, 1913.

(ACT IV OF 1913.)

[Amended by the Repealing and Amending Act XI of 1923.]

In sections 3 (4), 35 (2) and 91 (1) (c), for the word "confinement" the word "detention" shall be substituted.

In sections 30 and 35 (2), for the word "confined" wherever it occurs, the word "detained" shall be substituted.

Lunacy (Amendment) Act, 1923.

(ACT XXXII OF 1923.)

S. 20 :—*[Amended by Act XXXII of 1923].*

2. To section 20 of the Indian Lunacy Act, 1912, the following proviso shall be added, namely :—

"Provided that no reception order shall continue to have effect—

(a) after the expiry of thirty days from the date on which it was made, unless the lunatic has been admitted to the place mentioned therein within that period, or

(b) after the discharge, under the provisions of this Act, of the lunatic from such place or from any asylum to which he may have been removed."

Maintenance Orders Enforcement Act, 1921.

(ACT XVIII OF 1921.)

[*Passed on the 5th October, 1921.*]

An Act to facilitate the enforcement in British India of Maintenance Orders made in other parts of His Majesty's Dominions and Protectorates and vice versa.

WHEREAS it is expedient to facilitate the enforcement in British India of Maintenance Orders made in other parts of His Majesty's Dominions and Protectorates and *vice versa*; It is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may be called the Maintenance Orders Enforcement Act, 1921.

(2) It extends to the whole of British India including the Scnthal, Pargannas and British Baluchistan.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

"Court of summary jurisdiction" means the Court of a Chief Presidency Magistrate or of a District Magistrate;

"dependants" means such persons as a person against whom a maintenance order is made is liable to maintain according to the law in force in the part of His Majesty's Dominions in which the maintenance order is made;

"maintenance order" means a decree or order, other than an order of affiliation, made by a Court in the exercise of civil or criminal jurisdiction for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made;

"prescribed" means prescribed by rules made under this Act;

"proper authority" means the authority appointed by, or under the law of, a reciprocating territory "to receive and transmit documents to which this Act applies; and

"reciprocating territory" means any part of His Majesty's Dominions outside British India in respect of which this Act for the time being applies.

3. (1) If the Governor-General in Council is satisfied that provisions have been made by the Legislature of any part of His Majesty's Dominions for the enforcement within that part of maintenance orders made by Courts in British India, the Governor-General in Council may, by notification in the Gazette of India, declare that this Act applies in respect of that part of His Majesty's Dominions and thereupon it shall apply accordingly.

(2) The Governor-General in Council may, by like notification, declare that this Act applies in respect of any British protectorate, or in respect of any State in India, and where such a declaration has been made, this Act shall apply as if such protectorate or State were a reciprocating territory.

4. (1) Where a maintenance order has, whether before or after the passing of this Act, been made against any person by any Court in any reciprocating territory, and a certified copy of the order has been transmitted by the proper authority of that territory to the Governor-General, the Governor-General in Council shall send a copy of the order to the prescribed officer of a Court in British India for registration, and, on receipt thereof the order shall be registered in the prescribed manner.

(2) The Court in which an order is to be so registered as aforesaid shall, if the Court by which the order was made was, in the opinion of the Governor-General in Council, a Court of superior jurisdiction, be a High Court, and, if the Court was not, in his opinion, a Court of superior jurisdiction, be a Court of summary jurisdiction.

5. Where a Court in British India has, whether before or after the commencement of this Act, made a maintenance order against any person, and it is proved to that Court that the person against whom the order was made is resident in a reciprocating territory, the Court shall send to the Governor-General in Council, for transmission to the proper authority of that territory, a certified copy of the order.

6. (1) Where application is made to a court of summary jurisdiction in British India for a maintenance order against any person, and it is proved that that person is resident in a reciprocating territory, the Court may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the application, make any such order as it might have made if that person had wilfully neglected to attend the Court; but in such case the order shall be provisional only and shall have no effect unless and until confirmed by a competent Court in such territory.

(2) The evidence of every witness who is examined on any such application shall be reduced to writing, and such deposition shall be read over to, and signed by, him.

(3) Where such an order is made, the Court shall send to the Governor-General in Council for transmission to the proper authority of the reciprocating territory in which the person against whom the order is made is alleged to reside, the depositions so taken and a certified copy of the order together with a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing and such information as the Court possesses for facilitating the identification of that person and ascertaining his whereabouts.

(4) Where any such provisional order has come before a Court in a reciprocating territory for confirmation, and the order has by that Court been remitted to the Court of summary jurisdiction which made the order for the purpose of taking further evidence, that Court shall, after giving the prescribed notice, proceed to take the evidence in like manner and

subject to the like conditions as the evidence in support of the original application.

(5) If it appears to the Court hearing such evidence that the order ought not to have been made, the Court may rescind the order, but in any other case the depositions shall be sent to the Governor-General in Council and dealt with in like manner as the original depositions.

(6) The confirmation of an order made under this section shall not affect any power of a Court of summary jurisdiction to vary or rescind that order :

Provided that, on the making of a varying or rescinding order, the court shall send a certified copy thereof to the Governor-General in Council for transmission to the proper authority of the reciprocating territory in which the original order was confirmed, or to which it was sent for confirmation and that, in the case of an order varying the original order, the order shall not have any effect unless and until confirmed in like manner as the original order.

7. (1) Where a maintenance order has been made by a Court in a reciprocating territory and the order is provisional only, and has no effect unless and until confirmed by a Court of summary jurisdiction in British India, and a certified copy of the order, together with the depositions of the witnesses and a statement of the grounds on which the order might have been opposed, has been transmitted to the Governor-General, and it appears to the Governor-General in Council that the person against whom the order has been made is resident in British India, the Governor-General in Council may send the said documents to the prescribed officer of a Court of summary jurisdiction, with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and, upon receipt of such documents and requisition, the Court shall issue such a summons and cause it to be served upon such person.

(2) A summons issued under sub-section (1) shall for all purposes be deemed to be a summons issued by the Court in the exercise of its original criminal jurisdiction.

(3) At the hearing it shall be open to the person to whom the summons was issued to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence, and the certificate from the Court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(4) If at the hearing the person served with the summons does not appear or, on appearing, fails to satisfy the Court that the order ought not to be confirmed, the Court may, notwithstanding any pecuniary limit imposed on its power by any law for the time being in force in British India, confirm the order either without modification or with such modifications as to the Court after hearing the evidence may seem just :

Provided that no sum shall be awarded as maintenance under this section, or shall be recoverable as such, at a rate exceeding that proposed in the provisional order.

(5) If the person to whom the summons was issued appears at the hearing and satisfies the Court that for the purpose of any defence it is necessary to remit the case to the Court which made the provisional order for the taking of any further evidence the Court may for that purpose send a certified copy of the record to the Governor-General in Council for transmission to that Court through the proper authority of the reciprocating territory, and may adjourn the proceedings.

(6) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming Court, and where on an application for rescission or variation the Court is satisfied that it is necessary to remit the case to the Court which made the provisional order for the purpose of taking any further evidence, the Court may for that purpose send a certified copy of the record to the Governor-General in Council for transmission to that Court through the proper authority of the reciprocating territory, and may adjourn the proceedings.

8. (1) Subject to the provisions of this Act, where an order has been registered under this Act in a High Court, the order shall, from the date of such registration be of the same force and effect, and all proceedings may be taken thereon as if it had been an order originally obtained in the High Court in the exercise of its civil jurisdiction, or in such Civil Court subordinate to that High Court as may be named by the High Court in this behalf, and that Court shall have power to enforce the order accordingly.

(2) A Court of summary jurisdiction in which an order has been registered under this Act or by which an order has been confirmed under this Act, and the officers of such Court, shall have such powers and perform such duties, for the purpose of enforcing the order, as may be prescribed.

9. A Court in registering or confirming an order for maintenance in accordance with the provisions of this Act shall direct that the charges for the transmission to the Court, from which the order has been received or in which the provisional order has been made, as the case may be, of the sum awarded as maintenance shall be borne by the person against whom the order has been so made or confirmed, and shall be recovered from him in addition to the sum awarded as maintenance and in addition to, and in the same manner as, such other costs and charges as may be awarded or levied by the Court.

10. For the purposes of this Act, any document purporting to be signed by a judge or officer of a Court outside British India shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a Court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the Court to sign the document.

11. Depositions taken in a Court in any reciprocating territory may, for the purposes of this Act, be received in evidence in proceedings before Courts of summary jurisdiction under this Act.
Depositions to be evidence.

12. The Governor-General in Council may make rules for the purpose of carrying into effect the purposes of this Act, and in particular may make rules for the levy of the costs or charges for anything done under this Act and for all matters which are directed or permitted to be prescribed.
Rule-making power.

Marine (Amendment) Act, 1921.

(ACT X OF 1921.)

[Passed on the 29th September, 1921.]

An Act further to amend the Indian Marine Act, 1887.

WHEREAS it is expedient further to amend the Indian Marine Act, XIV of 1887. 1887; It is hereby enacted as follows:—

1. This Act may be called the Indian Marine (Amendment) Act, 1921.
Short title.

2. In the proviso to sub-section (1) of section 52 of the Indian Marine Act, 1887 (hereinafter referred to as the said Act), for the words "by, or with the previous sanction of, the Governor-General in Council" the words "by the Governor-General in Council or by the Director of Marine" shall be substituted.
XIV of 1887. Amendment of section 52 (1), Act XIV of 1887.

3. In sub-section (2) of section 66 of the said Act, the words "with the previous sanction of the Governor-General in Council" shall be omitted.
Amendment of section 66 (2), Act XIV of 1887.

Merchant Shipping Act, 1923.

(ACT XXI OF 1923.)

[Passed on the 2nd April, 1923.]

An Act to consolidate certain enactments relating to Merchant Shipping.

WHEREAS it is expedient to consolidate certain enactments relating to Merchant Shipping; It is hereby enacted as follows:—

PART I.

INTRODUCTORY.

1. (1) This Act may be called the Indian Merchant Shipping Act, 1923.
Short title and commencement.

(2) It shall come into force on such date as the Governor-General in Council may, by notification in the Gazette of India, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

- (1) "effects" includes clothes and documents;
- (2) "foreign-going ship" means a ship, not being a home-trade ship, employed in trading between any port in British India and any other port or place;
- (3) "home-trade ship" means a ship employed in trading between any ports in British India or between any port in British India and any port or place on the continent of India or in the Straits Settlements, or in the Island of Ceylon;
- (4) "master" includes every person (except a pilot or harbour master) having command or charge of a ship;
- (5) "Merchant Shipping Acts" mean the Merchant Shipping Acts, 1894—1921;
- (6) "passenger" includes any person carried in a ship other than the master and crew and the owner, his family and servants;
- (7) "prescribed" means prescribed by rules made under this Act;
- (8) "seaman" means every person (except masters, pilots and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship;
- (9) "steam-ship" means every description of vessel used in navigation and propelled wholly or in part by the agency of steam; and
- (10) "wages" includes emoluments.

3. The provisions of this Act applying to steam-ships shall apply to ships propelled by electricity or other mechanical power, with such modifications as the Governor-General in Council may, by notification in the Gazette of India, direct for the purpose of adaptation.

Application of Act to ships propelled by electricity or mechanical power.

4. This Act shall not, except where specially provided, apply to ships belonging to His Majesty or the Government, or to ships belonging to any foreign Prince or State and employed otherwise than for profit in the public service of that foreign Prince or State.

Exemption of public ships.

PART II.

MASTERS AND SEAMEN.

5. (1) The provisions of this Part relating to the requirement of masters and mates to hold certificates of competency shall not apply to ships registered under the Indian Registration of Ships Act, 1841, and trading between ports in India and the coast of Arabia, when such ships are navigated and manned exclusively by Arabs, lascars or other Asiatic masters and seamen.

Application.

(2) Save as hereinbefore provided in this section, this Part shall, unless there is anything repugnant in the subject or context, apply to British ships and to the owners, masters and crews thereof as follows:—

(a) The provisions relating to licenses to supply seamen, engagement of the crew, agreements with lascars, discharge of seamen, payment

of wages, advance and allotment of wages, mode of recovering wages, and recovery of expenses of relief of distressed seamen, shall apply to every sea-going ship in British India.

(b) The provisions relating to the property of deceased seamen and apprentices shall apply to every sea-going ship, not being a ship registered in the United Kingdom or a ship employed in trading or going from or to any port in the United Kingdom, where the crew are discharged or the final port of destination of the ship is in British India.

(c) The provisions relating to the rights of seamen in respect of wages, to the return of distressed seamen, to the provisions and health of seamen, to the power of seamen to make complaints, to the protection of seamen from imposition and to discipline shall apply to sea-going ships registered in British India, while such ships are in British India.

(d) The provisions relating to official logs shall apply to sea-going ships registered in British India, and to any sea-going ship, not being a ship registered in the United Kingdom, employed in trading or going between any port in British India and any port not situated in the part of His Majesty's dominions in which the ship is registered other than in the United Kingdom.

N & S Vict.,
s. 60. (3) The provisions of this Part, in so far as they are adaptations of the provisions of Part II of the Merchant Shipping Act, 1894, and are not local in their application have, by virtue of section 264 of the Merchant Shipping Act, 1894, effect throughout His Majesty's dominions and in all places where His Majesty has jurisdiction, as well as in British India.

Shipping Offices.

6. (1) Shipping offices shall be maintained at every port in British India where there is a shipping office at the commencement of this Act, and may be established and maintained at such other ports as the Governor-General in Council may deem necessary.

(2) For every such office there shall be a shipping-master with such deputy shipping-masters, clerks and servants (if any) as the Local Government may consider necessary.

(3) Shipping-masters and deputy shipping-masters shall be appointed by the Local Government, and shall respectively be subject to the control of that Government or of any intermediate authority which it may appoint.

(4) Every act done by or before a deputy shipping-master shall have the same effect as if done by or before a shipping-master.

7. (1) The Local Government may direct that at any port at which no separate shipping office is established, the whole or any part of the business of the shipping office shall be conducted at the custom house, or at the office of the port officer, or at such other office as the Local Government shall direct, and thereupon the same shall be conducted accordingly.

Power to direct that business of shipping office be transacted at custom house office or elsewhere.

(2) In respect of such business such custom house or office as aforesaid shall for all purposes be deemed to be a shipping office, and the officer to whom such business is committed shall for all purposes be deemed to be a shipping-master within the meaning of this Act.

Business of ship-
ping-masters.

8. It shall be the general business of shipping-masters—

(i) to superintend and facilitate the engagement and discharge of seamen in manner in this Act provided ;

(ii) to provide means for securing the presence on board at the proper times of the seamen who are so engaged ;

(iii) to give to all persons desirous of apprenticing boys to the sea service and duly authorised so to do by the Apprentices Act, 1850, and XIX of 1850, also to owners and masters of British ships requiring apprentices, such assistance as may be in their power to facilitating the making of such apprenticeships ;

(iv) to perform such other duties relating to seamen, apprentices and merchant ships as are for the time being committed to them by or under this Act or the Merchant Shipping Acts.

9. (1) Such fees, not exceeding the sum specified in Table A in Schedule I, as may be fixed by the Local Government shall be payable upon all engagements and discharges effected before shipping masters.

(2) Scales of the fees payable for the time being shall be conspicuously placed in the shipping office, and all shipping-masters, their deputies, clerks and servants, may refuse to proceed with any engagement unless the fees payable thereon are first paid.

(3) Every owner or master of a ship engaging or discharging any seaman in a shipping office or before a shipping-master, shall pay to the shipping-master the whole of the fees hereby made payable in respect of such engagement or discharge, and may, for the purpose of in part reimbursing himself, deduct in respect of each such engagement or discharge from the wages of all persons (except apprentices) so engaged or discharged, and retain any sums not exceeding the sums specified in that behalf in Table B in Schedule I :

Provided that, if in any cases the sums which the owner is so entitled to deduct, exceed the amount of the fee payable by him, such excess shall be paid by him to the shipping-master in addition to such fee.

(4) For the purpose of determining the fees to be paid upon the engagement and discharge of seamen belonging to foreign-going ships which have running agreements as hereinafter provided, the crew shall be considered to be engaged when the agreement is first signed, and to be discharged when the agreement finally terminates ; and all intermediate engagements and discharges shall be considered to be engagements and discharges of single seamen.

10. If a shipping-master, deputy shipping-master, clerk or servant in a shipping office demands or receives, other than the fees authorised under this Act, any remuneration whatever, either directly or indirectly, for hiring or supplying any seaman for a ship or transacting any business which it is his duty to transact, he shall be liable for every such offence to a fine which may extend to two hundred rupees, and shall also be dismissed from his office.

Prohibition on taking other remuneration at shipping office.

Certificates of Competency.

Certificates of competency to be held by officers of foreign-going and home-trade ships and foreign passenger ships.

11. (1) Every British foreign-going ship and every British home-trade ship of three hundred tons or upwards when going to sea from any place in British India shall be provided with officers duly certificated under this Act according to the following scale, namely :—

(a) in any case, with a duly certificated master ;

(b) if the ship is of three hundred tons or upwards, with at least one officer besides the master holding a certificate not lower than that of a mate.

(2) Every British foreign-going steamship when going to sea from any place in British India shall be provided with engineers duly certificated under this Act according to the following scale, namely :—

(a) if the ship is of one hundred nominal horse-power or upwards, with at least two engineers, one of whom shall be a first class and the other a first class or second class engineer duly certificated ;

(b) if the ship is of less than one hundred nominal horse-power, with at least one engineer who is a first class or second class engineer duly certificated.

(3) Every British home-trade steam-ship when going to sea from any place in British India and every foreign steam-ship carrying passengers between places in British India shall be provided with engineers duly certificated according to the following scale, namely .—

(a) if the ship is of fifty nominal horse-power, or upwards with at least one engineer who is a first class or second class engineer duly certificated ;

(b) if the ship is of less than fifty nominal horse-power, with at least one engineer who is a first class or second class engineer, or an engine driver duly certificated.

(4) Nothing in this section which relates to engineers or engine drivers shall apply to any steam-ship to which the provisions of the Inland Steam-vessels Act, 1917, apply.

12. An officer shall not be deemed to be duly certificated under this Act, unless he holds a certificate of a grade appropriate to his station in the ship or of a higher grade,

(a) granted in accordance with the Merchant Shipping Acts or any Act repealed thereby or this Act or any Act repealed hereby ; or

(b) issued by a competent authority in any British possession, the certificates of which have been declared by Order in Council made 57 & 58 Vict., under section 102 of the Merchant Shipping Act, 1894, to have the same force as if they were granted under that Act. c. 60.

Penalty for serving, etc., as a master, mate or engineer without a certificate.

13. Any person who—

(a) having been engaged as one of the officers mentioned in section 11, goes to sea as such officer without being duly certificated, or

(b) employs a person as an officer in contravention of section 11, without ascertaining that the person so serving is duly certificated, shall be liable for each such offence to a fine which may extend to five hundred rupees.

Grades of certificates of competency.

14. (1) Certificates of competency shall be granted in accordance with this Act for each of the following grades, namely:—

Master of foreign-going ship.	Mate of a home-trade ship.
First mate of foreign-going ship.	First class engineer.
Second mate of foreign-going ship.	Second class engineer.
Master of a home-trade ship.	Engine driver.

(2) A certificate of competency for a foreign-going ship shall be deemed to be of a higher grade than the corresponding certificate for a home-trade ship, and shall entitle the lawful holder thereof to go to sea in the corresponding grade in such last-mentioned ship; but no certificate for a home-trade ship shall entitle the holder to go to sea as master or mate of a foreign-going ship.

15. The Local Government or a person duly authorised by the Local Government in this behalf shall appoint persons for the purpose of examining the qualifications of persons desirous of obtaining certificates of competency under this Act.

Examinations for certificates.

16. The Local Government or such authorised person shall deliver to every applicant, who is duly reported by the examiners to have passed the examination satisfactorily and to have given satisfactory evidence of his sobriety, experience and ability and general good conduct on boardship, such a certificate of competency as the case requires:

Grant of certificates on passing examinations.

Provided that the Local Government may, in any case in which it has reason to believe that the report has been unduly made, require, before granting a certificate, a re-examination of the applicant or a further inquiry into his testimonials and character.

17. (1) A person who has attained the rank of Lieutenant in His Majesty's Navy or in the Royal Indian Marine shall be entitled to a certificate of service as the master of a foreign-going ship without examination.

Certificates of service of Naval Officers.

(2) A person who has attained the rank of engineer or assistant engineer in His Majesty's Navy or the Royal Indian Marine, shall be entitled without examination, if an engineer, to a certificate of service as first class engineer, and, if an assistant engineer, to a certificate of service as second class engineer.

(3) A certificate of service shall differ in form from a certificate of competency, and shall contain the name and rank of the person to whom it is delivered, and the Local Government shall deliver a certificate of service to any person who proves himself to be entitled thereto.

(4) The provisions of this Act (including the penal provisions) shall apply in the case of a certificate of service as they apply in the case of a certificate of competency.

18. Every certificate of competency granted under this Act shall be in the prescribed form and shall be made in duplicate, and one copy shall be delivered to the person entitled to the certificate, and the other shall be kept by the Local Government and recorded in the prescribed manner.

Form of certificates.
Record of orders affecting certificates.

19. A note of all orders made for suspending, cancelling, altering or otherwise affecting any certificate of competency, in pursuance of the powers contained in this Act, shall be entered on the copy of the certificate kept by the Local Government.

20. Whenever a master, mate, engineer or engine-driver proves to the satisfaction of the Local Government by or under the authority of which his certificate was granted that he has, without fault on his part, lost or been deprived of a certificate already granted to him, the Local Government shall cause a copy of the certificate, to which by the record kept in accordance with this Act he appears to be entitled, to be granted to him, and such copy shall have all the effect of the original.

Loss of certificate.
Power to make rules as to grant of certificates of competency.

21. The Local Government, with the previous sanction of the Governor-General in Council, may make rules to regulate the granting of certificates of competency under this Act, and may, by such rules,—

(a) provide for the conduct of the examination of persons desirous of obtaining certificates of competency as masters, mates, engineers, or engine drivers ;

(b) prescribe the qualifications to be respectively required of persons desirous of obtaining certificates of competency as masters, first mates, second mates, first-class engineers, second-class engineers, or engine drivers,

(c) fix the fees to be paid by applicants for examination ; and

(d) prescribe the form in which such certificates are to be framed and the manner in which the copy of the certificate to be kept by the Local Government is to be recorded.

Production of certificates of competency to shipping-master.

22. (1) The master of a foreign-going ship—

(a) on signing the agreement with his crew shall produce to the shipping-master, before whom the same is signed, the certificates of competency which the master, mate and engineers of the ship are by this Act required to hold; and

(b) in the case of a running agreement shall, also, before the second and every subsequent voyage, produce to the shipping-master the certificate of competency of any mate or engineer then first engaged by him who is required by this Act to hold a certificate.

(2) The master or owner of every home-trade ship of more than three hundred tons burden shall produce to some shipping-master in British India, within twenty-one days after the thirtieth of June and the thirty-first of December in every year, or (if the ship is not at any port in British India within twenty-one days after either the thirtieth of June or the thirty-first day of December in any year) within forty-eight hours after her next arrival at any port in British India, the certificates of competency which the master, mates and engineers of the ship are by this Act required to hold.

(3) Upon the production of the certificates of competency, the shipping-master shall, if the certificates are such as the master, mates and engineers of the ship ought to hold, give to the master a certificate to the effect that the proper certificates of competency have been so produced.

(4) The master shall, before proceeding to sea, produce the certificate given to him by the shipping-master to the Customs-collector, or, if there is no Customs-collector, to the officer whose duty it is to grant a port-clearance.

(5) No officer of customs or other officer shall clear any such ship outwards without such production; and, if any ship attempts to go to sea without a clearance, any such officer may detain her until the certificate is produced.

Apprenticeships to the Sea Service.

23. (1) Subject to the provisions of the Apprentices Act, 1850, any **XIX of 1951** boy may be bound as an apprentice in the sea service to the owner of any ship registered in British India to be employed in any such ship, being the property of such person, the master of which is a British subject, and while so employed to be taught the craft and duty of a seaman. and the provisions of the said Act shall, save as hereinafter provided in this section, apply accordingly.

(2) The master of any ship in which any apprentice bound to the sea service shall be appointed to serve by the party to whom he is bound shall be deemed to be the agent of such party for the purposes of the said Act.

(3) The duties of the Magistrate under that Act in respect of the contract of apprenticeship and of the endorsements thereon of any assignment, alteration or cancellation of the contract and of the certification of the offer of the continuation of the contract by the executors or administrators of a deceased master of the apprentice shall be performed by the shipping-master of the port where the apprentice is to begin his service.

Licenses to supply Seamen.

24. (1) The Local Government or any person duly authorized by the Local Government in this behalf may grant to such persons as may be deemed fit licenses to engage or supply seamen for merchant ships in British India.

(2) Any such license shall continue for such period, and may be granted and revoked on such terms and conditions as the Local Government thinks proper.

25. (1) A person shall not engage or supply a seaman to be entered on board any ship in British India unless that person either holds a license under this Act for the purpose, or is the owner or master or mate of the ship, or is *bona fide* the servant and in the constant employ of the owner, or is a shipping-master.

(2) A person shall not employ, for the purpose of engaging or supplying a seaman to be entered on board any ship in British India, any person unless that person either holds a license under this Act for the purpose, or is the owner or master or mate of the ship, or is *bona fide* the servant and in the constant employment of the owner, or is a shipping-master.

(3) A person shall not receive or accept to be entered on board any ship any seaman if that person knows that the seaman has been engaged or supplied in contravention of this section.

(4) If a person acts in contravention of this section, he shall for each seaman in respect of whom an offence is committed be liable to a fine which may extend to one hundred rupees, and, if a licensed person shall forfeit his license.

26. (1) A person shall not demand or receive, either directly or indirectly, from any seaman, or from any person seeking employment as a seaman, or from any person on his behalf, any remuneration whatever for providing him with employment other than the fees authorised by this Act.

(2) If a person acts in contravention of this section, he shall for each such offence be liable to a fine of fifty rupees, and, if a licensed person, shall forfeit his license.

Engagement of Seamen.

27. (1) The master of every British ship, except home-trade ships of a burden not exceeding three hundred tons, shall enter into an agreement (in this Act called the agreement with the crew) in accordance with this Act with every seaman whom he engages in, and carries to sea as one of his crew from, any port in British India.

(2) If a master of a ship carries any seaman to sea without entering into an agreement with him in accordance with this Act, the master shall for each offence be liable to a fine which may extend to fifty rupees.

28. (1) An agreement with the crew shall be in a form sanctioned by the Governor-General in Council, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same.

Form and contents of the agreement.

(2) The agreement with the crew shall contain as terms thereof the following particulars, namely :—

(a) either the nature and, as far as practicable, the duration of the intended voyage or engagement or the maximum period of the voyage or engagement, and the places or parts of the world, if any, to which the voyage or engagement is not to extend ;

(b) the number and description of the crew, specifying how many are engaged as sailors ;

(c) the time at which each seaman is to be on board or to begin work ;

(d) the capacity in which each seaman is to serve ;

(e) the amount of wages which each seaman is to receive ;

(f) a scale of the provisions which are to be furnished to each seaman, such scale being, in the case of lascars or other native seamen, not less than a scale to be fixed by the Local Government with the previous sanction of the Governor-General in Council and published in the local official Gazette ;

(g) any regulations as to conduct on board and as to fines, short allowance of provisions or other lawful punishments for misconduct, which have been sanctioned by the Governor-General in Council as regulations proper to be adopted, and which the parties agree to adopt ; and

(h) where it is agreed that the services of any lascar or other native seaman shall end at any port not in British India, a stipulation to provide him either fit employment on board some other ship bound to the port at which he was shipped or to such other port in British India as may be agreed on, or a passage to some port in British India free of charge or on such other terms as may be agreed upon, and in this provision the word "seaman" shall include also any native of British India carried to sea from any port in British India as one of the crew :

Provided that any such stipulation shall be signed by the owner of the ship or by the master on his behalf.

(3) The agreement with the crew shall be so framed as to admit of such stipulations to be adopted at the will of the master and seaman in each case (not being inconsistent with the provisions of any enactment for the time being in force relating to Merchant Shipping) as to advance of wages and supply of warm clothing, and may contain any other stipulations which are not contrary to law.

(4) If a master enters into an agreement with a lascar or other native seaman for a scale of provisions less than the scale fixed under this section, he shall be liable to a fine which may extend to two hundred rupees.

29. If the master of a ship registered at a port outside British India has an agreement with the crew made in due form according to the law of that port or of the port in which her crew were engaged and engages a single seaman not being a lascar or other native seaman in any port in British India, the seaman may sign the agreement so made, and it shall not be necessary for him to sign an agreement under this Act.

Engagement of single seaman where agreement is made out of British India.

30. (1) The following provisions shall have effect with respect to the agreements with the crew made in British India in the case of foreign-going ships registered either within or without British India, namely:—

(a) The agreement shall, subject to the provisions of this Act as to substitutes, be signed by each seaman in the presence of a shipping-master.

(b) The shipping-master shall cause the agreement to be read over and explained to each seaman, in a language understood by him, or shall otherwise ascertain that each seaman understands the same before he signs it, and shall attest each signature.

(c) When the crew is first engaged the agreement shall be signed in duplicate and one part shall be retained by the shipping master, and the other part shall be delivered to the master, and shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequently to the first departure of the ship.

(d) When a substitute is engaged in the place of a seaman who has duly signed the agreement and whose services are lost within twenty-four hours of the ships putting to sea by death, desertion, or other unforeseen cause, the engagement shall, if practicable, be made before a shipping-master, and if not practicable the master shall, before the ship puts to sea, if practicable, and, if not, as soon afterwards as possible, cause the agreement to be read over and explained to the substitute; and the substitute shall thereupon sign the same in the presence of witness, who shall attest the signature.

(e) The agreement may be made for a voyage of the ship or, if the voyages of the ship average less than six months in duration, may be made to extend over two or more voyages, and agreements so made are in this Act referred to as running agreements.

(f) Save as otherwise provided in this section, running agreements shall not extend beyond the next following thirtieth day of June or thirty-first day of December, or the first arrival of the ship at her port of destination in British India after such date, or the discharge of cargo consequent upon that arrival.

(g) On every return to a port in British India before the final termination of a running agreement, the master shall discharge or engage before the shipping-master at such port any seaman whom he is required by law so to discharge or engage; and shall upon every such return endorse on the agreement a statement, as the case may be, either that no such discharges or engagements have been made or are intended to be made before the ship leaves port, or that all those made have been made

as required by law, and if the master wilfully makes a false statement in any such endorsement, he shall for each offence be liable to a fine which may extend to two hundred rupees.

(h) The master shall deliver the running agreement so endorsed to the shipping-master and the shipping-master shall, if the provisions of this Act relating to agreements have been complied with, sign the endorsement and return the agreement to the master.

(2) In the case of a ship—

(a) registered in British India, or

(b) registered in the United Kingdom but not employed in trading with any port in the United Kingdom,

a running agreement may be made to extend over two or more voyages so that it shall terminate either within six months from the date on which it was executed, or on the first arrival of the ship at her port of destination in British India after the expiration of that period, or on the discharge of cargo consequent upon such arrival, whichever of these dates shall be the latest :

Provided that no such agreement shall continue in force if, after the expiration of such period of six months as aforesaid, the ship proceeds on a voyage from a port out of British India to any other such port which is not on the direct road or a customary route to her port of destination in British India :

Provided, also, that every such agreement shall, in addition to any other particulars required by law, contain such stipulations for the discharge of the crew and payment of their wages, for securing their return to the port at which they were shipped or to some other port in British India, and for other purposes on the termination of the agreement at a port out of British India under the foregoing proviso, as the Governor-General in Council may direct.

31. (1) When a running agreement has been made with the crew of

Renewal of running agreements in certain cases.

a foreign-going ship and the ship arrives after the next following thirtieth day of June or thirty-first day of December, as the case may be, or after the expiration of a period of six months from the date on which it was executed at a port of destination in British India which is not the port at which the crew have agreed to be discharged, the master may, with the previous sanction of the shipping master, renew the agreement with the crew, or may be required by the shipping master so to renew the agreement for the voyage from such port of destination to the port in British India at which the crew have agreed to be discharged.

(2) If the master of the ship is required by the shipping-master to renew the agreement as aforesaid and refuses so to renew it, any expenses which may be incurred by Government for the subsistence of the crew and their conveyance to the port at which they have agreed to be discharged shall be a charge upon the ship, and shall be recoverable as if they were expenses incurred in respect of distressed seamen under the provisions of this Act.

**Special provisions
as to agreements
with crew of home-
trade ship over three
hundred tons
burden.**

32. The following provisions shall have effect with respect to the agreements with the crew of home-trade ships for which an agreement with the crew is required under this Act, namely :—

(a) Agreements may be made either for service in a particular ship or for service in two or more ships belonging to the same owner, but, in the latter case, the names of the ships and the nature of the ships and the nature of the service shall be specified in the agreement.

(b) Crews or single seamen may, if the master thinks fit, be engaged before a shipping-master in the same manner as they are required to be engaged for service in foreign-going ships, but, if the engagement is not so made, the master shall, before the ship puts to sea, if practicable, and, if not, as soon afterwards as possible, cause the agreement to be read over and explained to each seaman, and the seaman shall thereupon sign the same in the presence of a witness, and the witness shall attest the signature.

(c) An agreement for service in two or more ships belonging to the same owner may be made by the owner instead of by the master, and the provisions of this Act with respect to the making of the agreement shall apply accordingly.

(d) Agreements shall not extend beyond the next following thirtieth day of June or thirty-first day of December or the first arrival of the ship at her final port of destination in British India after such date, or the discharge of cargo consequent on that arrival :

Provided that the owner or his agent may enter into time agreements in forms sanctioned by the Governor-General in Council with individual seamen to serve in any one or more ships belonging to such owner, which agreements need not expire on either the thirtieth day of June or the thirty-first day of December.

33. (1) The master of every foreign-going ship, of which the crew has been engaged before a shipping-master, shall, before finally leaving British India, sign and send to the nearest shipping-master a full and accurate statement in a form sanctioned by the Governor-General in Council, of every change which takes place in his crew before finally leaving British India, and that statement shall be admissible in evidence.

(2) If any master fails without reasonable cause to comply with the requirements of this section, he shall be liable for each offence to a fine which may extend to fifty rupees.

34. (1) In the case of a foreign-going ship on the due execution of an agreement with the crew in accordance with this Act, and also, when the agreement is a running agreement, on compliance by the master, before the second and every subsequent voyage made after the first commencement of the agreement, with the provisions of this Act respecting that agreement, the shipping-master shall grant the master of the ship a certificate to that effect.

**Certificate as to
agreement with crew
of foreign going ship.**

(2) The master of every foreign-going ship shall, before proceeding to sea, produce that certificate to the Customs-Collector, or, if there is no Customs-Collector, to the officer whose duty it is to grant a port-clearance.

(3) No officer of Customs or other officer shall clear any such ship outwards without such production; and, if any such ship attempts to go to sea without a clearance, any such officer may detain her until such certificate as aforesaid is produced.

(4) The master of every foreign-going ship shall, within forty-eight hours after the ship's arrival at her final port of destination in British India, or upon the discharge of the crew, whichever first happens, deliver such agreement to a shipping-master at the place; and such shipping-master shall thereupon give to the master a certificate of such delivery; and no officer of Customs or other officer shall clear any foreign-going ship inwards without the production of such certificate.

(5) Any master who fails without reasonable cause so to deliver the agreement with the crew, shall be liable for each offence to a fine which may extend to fifty rupees.

35. (1) The master or owner of a home-trade ship of more than three hundred tons burden shall, within twenty-one days after the thirtieth day of June and the thirty-first day of December in every year, or (if the ship is not at any port in British India within twenty-one days after either the thirtieth day of June or the thirty-first day of December) within forty-eight hours of her next arrival at a port in British India, deliver or transmit to a shipping-master in British India every agreement made within the six months next preceding such days respectively.

(2) The shipping-master on receiving such agreement shall give the master or owner of the ship a certificate to that effect; and no officer of Customs or other officer authorized to grant a port-clearance shall grant a clearance for any such ship without a production of the certificate, and, if any such ship attempts to go to sea without such clearance, any such officer may detain her until the certificate is produced.

(3) Any master or owner who fails, without reasonable cause, to comply with this section shall be liable for each offence to a fine which may extend to fifty rupees.

36. (1) The master shall, at the commencement of every voyage or engagement, cause a legible copy of the agreement, and, if necessary, a translation thereof in a language understood by the majority of the crew (omitting the signatures), to be placed or posted up in such part of the ship as to be accessible to the crew.

(2) Any master who fails without reasonable cause to comply with this section shall be liable for each offence to a fine which may extend to fifty rupees.

37. Every erasure, interlineation or alteration in any agreement with the crew (except additions made for the purpose of shipping substitutes or persons engaged subsequently to the first departure of the ship) shall be wholly inoperative, unless proved to have been made with the

consent of all the persons interested in such erasure interlineation or alteration by the written attestation (if made in His Majesty's Dominions) of some shipping-master, Justice, officer of Customs, or other public functionary, or (if made out of His Majesty's Dominions) of a British consular officer or, where there is no such officer, of two respectable British merchants.

Engagement of Lascars by Masters of Foreign Ships.

38. (1) When the master of a foreign ship being at any port in British India engages any lascar or other native seaman to proceed to any port out of British India, he shall enter into an agreement with such seaman, and the agreement shall be made before a shipping-master in the manner provided by this Act for the making of agreements in the case of foreign-going ships.

Engagements between masters of foreign ships and lascars or native seamen.

(2) All the provisions of this Act, respecting the form of such agreements and the stipulations to be contained in them and the making and signing of the same, shall be applicable to the engagement of such seaman.

(3) The master of the foreign ship shall give to the shipping-master a bond with the security of some approved person resident in British India for an amount calculated at the rate of one hundred rupees for every such seaman and conditioned for the due performance of such agreement and stipulations, and for the repayment to the Secretary of State for India in Council of all expenses which may be incurred by Government in respect of any such lascar or other native seaman who is discharged or left behind at any port out of British India and becomes distressed and is relieved under the provisions of the Merchant Shipping Acts.

(4) The prescribed fees shall be payable in respect of every such engagement and deductions from the wages of seamen so engaged may be made to the extent and in the manner allowed under this Act.

39. If any lascar or other native seaman is engaged by the master of any foreign ship otherwise than is allowed in section 38, the master shall be liable to a fine which may extend to one hundred rupees for every seaman so engaged.

Penalty for master of foreign ship illegally engaging native seamen.

40. (1) The Local Government or such officer as it may appoint in this behalf may, by order in writing, prohibit any person from engaging in the territories subject to the said Government or in any specified portion of such territories, any native of India to serve as a seaman on any ship specified in such order, but in every case the reasons for the prohibition shall be stated in writing.

Power to prohibit engagement of native seamen.

(2) Whoever wilfully disobeys any such prohibition shall be liable to imprisonment for a term which may extend to three months, or to a fine which may extend to one thousand rupees, or to both.

41. (1) For the purpose of preventing seamen from being taken on board any British ship or lascars or native seamen being taken on board any foreign ship at any port in British India contrary to the provisions of this Act, any shipping-master or deputy shipping-master may

Power to board British ships and muster seamen.

enter at any time on board any such ship upon which he has reason to believe that seamen or lascars or native seamen, as the case may be, have been shipped, and may muster and examine the several seamen employed therein.

(2) If any person obstructs a shipping-master or deputy shipping-master in the exercise of his powers under sub-section (1), he shall be liable to a fine which may extend to one hundred rupees.

Discharge of Seamen.

42. (1) When a seaman serving in a British foreign-going ship is, on the termination of his engagement, discharged in British India, he shall, whether the agreement with the crew be an agreement for the voyage or a running agreement, be discharged in the manner provided by this Act in the presence of a shipping-master.

(2) If the master or owner of the ship acts in contravention of this section, he shall, for each offence, be liable to a fine which may extend to one hundred rupees.

(3) If the master or owner of a home-trade ship, of more than three hundred tons burden, so desires, the seamen of that ship may be discharged in the same manner as seamen discharged from a foreign-going ship.

43. (1) The master shall sign and give to a seaman discharged from his ship in British India, either on his discharge or on payment of his wages, a certificate of his discharge in a form sanctioned by the Local Government specifying the period of his service and the time and place of his discharge.

(2) If a master acts in contravention of this section, he shall for each offence be liable to a fine which may extend to one hundred rupees.

(3) The master shall also, upon the discharge of every certificated officer, whose certificate of competency has been delivered to and retained by him, return the certificate to the officer, and if, without reasonable cause, he fails so to do, he shall for each offence be liable to fine which may extend to two hundred rupees.

Payment of Wages.

44. (1) The master of every British ship shall, before paying off or discharging a seaman, deliver at the time and in the manner provided by this Act a full and true account in a form sanctioned by the Local Government of the seaman's wages and of all deductions to be made therefrom on any account whatever.

(2) The said account shall be delivered—

(a) where the seaman is not discharged before the shipping-master, to the seaman himself not less than twenty-four hours before his discharge or payment off; and

(b) where theseaman is to be discharged before a shipping-master, either to the seaman himself, at or before the time of his leaving the ship, or to the shipping-master not less than twenty-four hours before the discharge or payment off.

(3) If the master of a ship fails, without reasonable cause, to comply with this section, he shall for each offence be liable to a fine which may extend to fifty rupees.

45. (1) A deduction from the wages of a seaman shall not be allowed unless it is included in the account delivered in pursuance of this Act except in respect of a matter happening after the delivery.

Deductions from wages of seamen.

(2) The master shall, during the voyage, enter the various matters in respect of which the deductions are made, with the amount of the respective deductions as they occur, in a book to be kept for that purpose, and shall, if required, produce the book at the time of the payment of wages and also upon the hearing before any competent authority of any complaint or question relating to that payment.

46. (1) Where a seaman is discharged before a shipping-master in British India, he shall receive his wages through, or in the presence of, a shipping-master unless a competent Court otherwise directs, and in such a case, if the master or owner of the ship pays his wages in British India in any other manner, he shall for each offence be liable to a fine which may extend to one hundred rupees.

Payment of wages before shipping master.

(2) If the master or owner of a home-trade ship so desires, the seamen of that ship may receive their wages in the same manner as seamen discharged from a foreign-going ship.

47. (1) The master or owner of every ship shall pay to every seaman his wages within three days after the cargo has been delivered or within five days after the seaman's discharge, whichever first happens, and the seaman shall at the time of his discharge be entitled to be paid on account a sum equal to one-fourth part of the balance due to him.

Time of payment of wages.

(2) If a master or owner fails without reasonable cause to make payment at that time, he shall pay to the seaman a sum not exceeding the amount of two days' pay for each of the days during which payment is delayed beyond the respective times, but the sum payable shall not exceed ten days' double pay.

(3) Any sum payable under this section may be recovered as wages.

48. (1) Where a seaman is discharged and the settlement of his wages completed before a shipping-master, he shall sign in the presence of the shipping-master a release in a form sanctioned by the Local Government of all claims in respect of the past voyage or engagement and the release shall also be signed by the master or owner of the ship and attested by the shipping-master.

Settlement of wages.

(2) The release so signed and attested shall be retained by the shipping-master and shall operate as a mutual discharge and settlement of all demands between the parties thereto in respect of the past voyage or engagement.

(3) A copy of the release, certified under the hand of the shipping-master to be a true copy, shall be given by him to any party thereto requiring the same, and such copy shall be receivable in evidence upon any future question touching such claims, and shall have all the effect of the original of which it purports to be a copy.

(4) Where the settlement of a seaman's wages is by this Act required to be completed through, or in the presence of, a shipping-master, no payment, receipt or settlement made otherwise than in accordance with this Act shall operate or be admitted as evidence of the release or satisfaction of any claim.

(5) Upon any payment being made by a master before a shipping-master the shipping-master shall, if required, sign and give to the master a statement of the whole amount so paid, and this statement shall, as between the master and his employer, be admissible as evidence that the master has made the payments therein mentioned.

49. (1) Where any question of whatever nature and whatever the amount in dispute between a master or owner and any of his crew is raised before a shipping-master, and both parties agree in writing to submit the same to him, the shipping-master shall hear and decide the question so submitted, and an award made by him upon the submission shall be conclusive as to the rights of parties, and any document purporting to be such submission or award shall be *prima facie* evidence thereof.

(2) An award made by a shipping-master under this section may be enforced by a Magistrate in the same manner as an order for the payment of wages made by such Magistrate under this Act.

50. (1) In any proceedings under this Act before a shipping-master relating to the wages, claims or discharge of a seaman, the shipping-master may require the owner or his agent or the master or any mate or other member of the crew to produce any log-books, papers, or other documents in his possession or power relating to any matter in question in the proceedings, and may require the attendance of and examine any of those persons being then at or near the place on the matter.

(2) If any person so required fails, without reasonable cause, to comply with the requisition, he shall for each offence be liable to a fine which may extend to fifty rupees.

51. Where a seaman or apprentice has agreed with the master of a British ship for payment of his wages in British currency, the seaman or apprentice shall be entitled to demand and recover in British Indian currency the amount due to him estimated according to the rate of exchange for the time being fixed by the Secretary of

Decision of questions by shipping-masters.

Power of shipping-master to require production of ship's papers.

Rate of exchange for payment of seamen in British Indian money.

State for India in Council, with the concurrence of the Lords Commissioners of His Majesty's Treasury for the adjustment of financial transactions between the Imperial and the Indian Governments.

Advance and Allotment of Wages.

52. (1) Any agreement with the crew may contain a stipulation for payment to a seaman, conditional on his going to sea
Advances and allotments. and in pursuance of the agreement, of a sum not exceeding the amount of one month's wages payable to the seaman under the agreement.

(2) Stipulations for the allotment of a seaman's wages may be made in accordance with this Act.

(3) Save as aforesaid an agreement by or on behalf of the employer of a seaman for the payment of money to or on behalf of the seaman, conditional on his going to sea from any port in British India shall be void, and no money paid in satisfaction or in respect of any such agreement shall be deducted from the seaman's wages, and a person shall not have any right of action, suit or set off against the seaman or his assignee in respect of any money so paid or purporting to have been so paid.

53. (1) Any stipulation made by a seaman at the commencement of a voyage for the allotment of any part of his wages
Regulations as to allotment notes. during his absence shall be inserted in the agreement with the crew, and shall state the amounts and times of the payments to be made,

(2) A seaman may require that a stipulation be inserted in the agreement for the allotment, by means of an allotment note, of any part (not exceeding one-third) of his wages in favour either of a relative of the seaman or some member of his family to be named in the note.

(3) Allotment notes shall be in a form sanctioned by the Local Government.

54. (1) The owner or any agent who has authorized the drawing of an allotment note shall pay to the shipping-master on demand the sums due under the note, and, if he fails to do so, the shipping-master may sue for and recover the same with costs ;
Payment of sums allotted.

Provided that no such sum shall be recoverable if it is shown to the satisfaction of the Court or Magistrate trying the case that the seaman has forfeited or ceased to be entitled to the wages out of which the allotment was to have been paid, but the seaman shall be presumed to be duly earning his wages unless the contrary is shown to the satisfaction of the Court or Magistrate either by the official statement of the change in the crew caused by his absence made and signed by the master as by this Act is required, or by a certified copy of some entry in the official log-book to the effect that he has died or left the ship, or by a credible letter from the master of the ship to the same effect, or by such other evidence, of whatever description, as the Court or Magistrate may consider sufficient.

(2) The shipping-master on receiving any such sum as aforesaid shall pay it over to the person named in that behalf in the allotment note.

(3) All such receipts and payments shall be entered in a book to be kept for the purpose, and all entries in the said book shall be authenticated by the signature of the shipping-master or the deputy shipping-master.

(4) The said book shall be at all reasonable times open to the inspection of the parties concerned.

Rights of Seamen in respect of Wages.

55. A seaman's right to wages and provisions shall be taken to begin either at the time at which he commences work or at the time specified in the agreement for his commencement of work or presence on board whichever first happens.

Right to wages and provisions.

56. (1) A seaman shall not by any agreement forfeit his lien on the ship or be deprived of any remedy for the recovery of his wages to which in the absence of the agreement he would be entitled, and shall not by any agreement abandon his right to wages in case of the loss of the ship or abandon any right that he may have or obtain in the nature of salvage, and every stipulation in any agreement inconsistent with any provisions of this Act shall be void.

Right to recover wages and salvage not to be forfeited.

(2) Nothing in this section shall apply to a stipulation made by the seamen belonging to any ship which according to the terms of the agreement is to be employed on salvage service with respect to the remuneration to be paid to them for salvage service to be rendered by that ship to any other ship.

57. (1) The right to wages shall not depend on the earning of freight, and every seaman and apprentice who would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to demand and recover the same notwithstanding that freight has not been earned; but in all cases of wreck or loss of the ship, proof that the seaman has not exerted himself to the utmost to save the ship, cargo and stores shall bar his claim to wages.

Wages not to depend on freight.

(2) Where a seaman or apprentice who would but for death be entitled by virtue of this section to demand and recover any wages dies before the wages are paid, they shall be paid and applied in manner provided by this Act with respect to the wages of a seaman who dies during a voyage.

58. Where the service of a seaman terminates before the date contemplated in the agreement by reason of the wreck or loss of the ship, or of his being left on shore at any place out of British India under a certificate granted as provided by the Merchant Shipping Acts of his unfitness or inability to proceed on the voyage, he shall be entitled to wages up to the time of such termination, but not for any longer period.

Wages on termination of service by wreck or illness.

59. A seaman or apprentice shall not be entitled to wages for any time during which he unlawfully refuses or neglects to work when required whether before or after the time fixed by the agreement for his commencement of such work nor, unless the Court hearing the case otherwise directs, for any period during which he is lawfully imprisoned for any offence committed by him.

Wages not to accrue during refusal to work or imprisonment.

60. Whenever in any proceeding relating to a seaman's or apprentice's wages it is shown that a seaman or apprentice has in the course of the voyage been convicted of any offence by a competent Court and rightly punished therefor by imprisonment or otherwise, the Court hearing the case may direct any part of the wages due to the seaman or apprentice not exceeding thirty rupees to be applied to re-imbursing any cost properly incurred by the master in procuring the conviction and imprisonment.

Power to deduct from wages cost of procuring conviction.

61. If a seaman having signed an agreement is discharged otherwise than in accordance with the terms thereof before the commencement of the voyage or before one month's wages are earned without fault on his part justifying that discharge and without his consent, he shall be entitled to receive from the master or owner, in addition to any wages he may have earned, due compensation for the damage caused to him by the discharge not exceeding one month's wages, and may recover that compensation as if it were wages duly earned.

Compensation to seamen.

62. (1) As respects wages due or accruing to a seaman or apprentice—

Restriction on sale of and charge upon wages.

(a) they shall not be subject to attachment by order of any Court ;

(b) an assignment or sale thereof made prior to the accruing thereof shall not bind the person making the same ;

(c) a power-of-attorney or authority for the receipt thereof shall not be irrevocable ;

(d) a payment of wages to a seaman or apprentice shall be valid in law notwithstanding any previous sale or assignment of those wages or any attachment or encumbrance thereof.

(2) Nothing in this section shall affect the provisions of this Act or any other law for the time being in force with respect to allotment notes.

Mode of recovering Wages.

63. A seaman or apprentice or a person duly authorized on his behalf may, as soon as any wages due to him not exceeding five hundred rupees become payable, sue for the same in a summary manner before any Magistrate exercising jurisdiction in or near the place at which his service has terminated or at which he has been discharged, or at which any person upon whom the claim is made is or resides, and the order made by the Magistrate in the matter shall be final.

Summary proceedings for wages.

..

64. A proceeding for the recovery of wages not exceeding five hundred rupees shall not be instituted by or on behalf of
 Restriction on suits for wages. any seaman or apprentice in any Colonial Court of Admiralty or in any Civil Court other than the Court of Small Causes where such a Court exists, except—

(a) where the owner of the ship is adjudged bankrupt or declared insolvent;

(b) where the ship is under arrest or is sold by the authority of any Court; or

(c) where a Magistrate under the authority of this Act refers a claim to the Court.

65. (1) The master of a ship shall, so far as the case permits, have the same rights, liens and remedies for the recovery of his wages as a seaman has under this Act or by any law or custom.
 Remedies of masters for wages.

(2) If in any proceeding in any Colonial Court of Admiralty touching the claim of a master in respect of wages any right of set off or counter claim is set up, the Court may enter into and adjudicate upon all questions and settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and may direct payment of any balance found to be due.

Property of Deceased Seamen.

66. (1) If any seaman or apprentice belonging to a British ship the voyage of which is to terminate in British India dies during that voyage, the master of the ship shall take charge of any money or effects belonging to the seaman or apprentice which are on board the ship.
 Master to take charge of the effects of deceased seamen.

(2) The master may, if he think fit, cause any effects to be sold by auction at the mast or otherwise by public auction.

(3) The master shall enter in the official log-book the following particulars, namely:—

(a) a statement of the amount of money and a description of the effects;

(b) in the case of a sale, a description of each article sold and the sum received for each; and

(c) a statement of the sum due to the deceased for wages and of the amount of deduction, if any, to be made from the wages.

(4) The said money, effects, proceeds of sale of effects, and balance of wages, are in this Act referred to as the property of the seaman or apprentice.

67. (1) The master shall, within forty-eight hours after his arrival at his port of destination in British India, deliver and pay the property of any deceased seaman or apprentice to the shipping-master at that port, and shall give to such shipping-master an account of the property so delivered and paid.
 Disposal of property of seamen who die during the voyage.

(2) A deduction claimed by the master in such account shall not be allowed unless verified, if an official log-book is required to be kept, by an entry in that book, and also by such other vouchers, if any, as may be reasonably required by the shipping master.

68. (1) If the master fails to comply with the provisions of this Act with respect to taking charge of the property of a deceased seaman or apprentice, or to making in the official log-book the proper entries relating thereto, or to the payment or delivery of the property, he shall be accountable for the property to the shipping-master as aforesaid, and shall pay and deliver the same accordingly and shall in addition, for each offence, be liable to a fine not exceeding treble the value of the property not accounted for or, if such value is not ascertained, not exceeding five hundred rupees.

Penalty for non-compliance with provisions as to property of deceased seamen.

(2) The property may be recovered in the same Court and manner in which the wages of seamen may be recovered under this Act.

69. Where any property of a deceased seaman or apprentice is paid or delivered to a shipping-master, the shipping-master, after deducting for expenses incurred in respect of that seaman or apprentice or of his property such sums as he thinks proper to allow, may—

Payment over property of deceased seamen by shipping-master.

(a) pay and deliver the residue to any claimants who can prove themselves to the satisfaction of the said shipping-master to be entitled thereto, and the said shipping-master shall be thereby discharged from all further liability in respect of the residue so paid or delivered ; or..

VII of 1889. (b) if he thinks fit so to do, require probate or letters of administration or a certificate under the Succession Certificate Act, 1889, to be taken out, and thereupon pay and deliver the residue to the legal representative of the deceased.

70. (1) Where no claim to the property of a deceased seaman or apprentice received by a shipping-master is substantiated within one year from the receipt thereof by such shipping-master, the shipping-master shall cause such property to be sold and pay the proceeds of the sale into the public treasury.

Disposal of unclaimed property of deceased seamen.

(2) If, after any money has been so paid into the public treasury, any claim is made thereto, then if the claim is established to the satisfaction of the shipping-master, the amount, or so much as shall appear to be due to the claimant, shall be paid to him, and if the claim is not so established the claimant may apply by petition to the High Court, and such Court, after taking evidence either orally or on affidavit, shall make such order on the petition as shall seem just :

Provided that after the expiration of six years from the receipt of such property by the shipping-master no claim to such property shall be entertained without the sanction of the Local Government.

Distressed Seamen.

71. (1) A certificate of the Local Government or of such officer as the Local Government may appoint in this behalf to the effect that any seaman named therein is distressed shall in all proceedings under the Merchant Shipping Acts regarding the maintenance and relief of distressed seamen be conclusive evidence that such seaman is distressed within the meaning of those Acts.

(2) Any master of a British ship refusing to accept such seaman as a distressed seaman under the provisions of the said Acts shall for each seaman with respect to whom he so refuses, be liable to a fine which may extend to one thousand rupees.

72. (1) Where any wages or expenses recoverable in respect of distressed seamen under the Merchant Shipping Acts, are, under the said Acts, a charge upon any ship, or recoverable from any master, owner or other person, within the jurisdiction of any Court in British India, the Governor-General in Council may, from time to time by notification in the Gazette of India, authorise, either generally or specially, such persons as he thinks fit to sue for and recover, in manner in the Merchant Shipping Acts provided, those wages or expenses.

(2) Every person so authorised shall be entitled to sue and recover accordingly in any such Court, and shall be deemed to be a person filling a public office within the meaning of clause (7) of section 57 of the Indian Evidence Act, 1872.

I of 1872.

(3) All suits and proceedings under this section shall be instituted and carried on in the name of the Secretary of State for India in Council.

Relief of distressed Seamen to whom the Merchant Shipping Acts do not apply.

Provisions of the Act not to apply to seamen or apprentices to whom the Merchant Shipping Acts apply.

73. Nothing in the following provision of this part relating to distressed seamen shall apply to seamen or apprentices to whom the provisions of the Merchant Shipping Acts apply.

Relief of distressed seamen at British Indian ports.

74. (1) Where any seamen or apprentices—

(a) being Indian subjects of His Majesty are found at any place in British India and have been shipwrecked, discharged or left behind whether from any British ship or from any of His Majesty's ships and are in distress in that place, or who have been engaged by any person acting either as principal or agent to serve in any ship belonging to any foreign Power, or to the subject of any foreign State, and are in distress in British India; and

(b) not being Indian subjects have been shipwrecked, discharged or left behind at any place in British India from any British ship registered in British India and are in distress in any such place,

the local authority may in accordance with the prescribed conditions provide for the subsistence of those seamen and apprentices (who are hereinafter referred to as distressed seamen) until such time as such authority is able to provide them with a passage as hereinafter provided.

(2) "Local authority", in relation to the provisions of this Act as to distressed seamen, means such person as the Local Government may, subject to the control of the Governor-General in Council, appoint to exercise the powers conferred, and to perform the duties imposed, on the local authority under this Act.

Distressed seamen to be sent home on board British ship wanting seamen to make up its crew.

75. (1) Subject to the prescribed conditions the local authority may cause distressed seamen to be put on board some ship belonging to any subject of His Majesty which is in want of men to make up its complement and is bound—

(a) in the case of distressed seamen who are Indian subjects of His Majesty, to their home or to a port in British India near their home ;

(b) in the case of other British distressed seamen, to any port in the United Kingdom or the British possession to which they belong (as the case requires) ; and

(c) in the case of distressed seamen not being subjects of His Majesty, to such place as the local authority, subject to the control of the Governor-General in Council may in each case determine.

(2) In default of any such ship, the local authority may, subject as aforesaid, provide such distressed seamen with a passage in any ship (whether British or foreign) bound as aforesaid.

Name and other particulars with regard to seamen to be indorsed on agreement of British ship.

76. The Local authority shall indorse on the agreement with the crew of any British ship on board of which any distressed seaman is sent the name of every person so sent on board thereof, with such particulars concerning the case as may be prescribed.

77. (1) The

Master of British ship compelled to convey and give subsistence to such seamen.

master of every British ship shall receive and afford a passage and subsistence to all distressed seamen whom he is required to take on board his ship under the provisions of section 75, not exceeding one for every fifty tons burden, and shall, during the passage, provide every such seaman with a proper berth or sleeping-place effectually protected against sea and weather.

(2) If the master of any such ship fails or refuses to receive on board his ship, or to give a passage or subsistence to, or to provide for, any such seaman contrary to the provisions of sub-section (1), he shall, for each such seaman with respect to whom he so fails or refuses, be liable to a fine which may extend to one thousand rupees.

78. (1) When the master of a British ship has conveyed a distressed

Conditions under which master may claim payment.

seaman in excess of the number (if any) wanted to make up the complement of his crew to any place in accordance with the requisition of a local authority under this Act, such master shall be entitled to be paid by the Secretary of State for India in Council in respect of the

subsistence and passage of such distressed seaman such sum *per diem* as the Governor-General in Council may fix :

Provided that no such payment shall be made except on the production of the following documents (that is to say) :—

(a) a certificate signed by the local authority by whose direction such distressed seaman was received on board, specifying the name of such seaman and the time when he was received on board ; and

(b) a declaration in writing by such master made and verified in manner hereinafter provided, and stating—

(i) the number of days during which such distressed seaman received subsistence and was provided for as aforesaid on board his ship ;

(ii) the number of men and boys forming the complement of his crew ;

(iii) the number of seamen and apprentices employed on board his ship during the time such distressed seaman was on board ; and

(iv) every variation (if any) of such number.

(2) The declaration required by this section shall, in the case of a ship conveying Indian subjects of His Majesty to a port in British India, be made before a shipping-master or such other officer as the Local Government may appoint. In other cases such declaration shall be made and verified in the same manner as declarations made under section 48 of the Merchant Shipping Act, 1906.

6 Edw. 7,
c. 48.

Wages and expenses incurred in respect of distressed seamen to be charged on ship to which they belong in certain cases.

79. Where any expenses are incurred by a local authority under this part on account of a distressed seaman either for his subsistence, necessary clothing, conveyance, home, and, in case he should die before reaching home, for his burial, those expenses (together with the wages, if any, due to the seaman) shall be a charge upon the ship, whether British or foreign, to which he belonged.

80. All such expenses and wages shall be recoverable with costs either from the master of such ship or from the person who is owner thereof for the time being, or, in the case of an engagement for service in a foreign ship, from such master or owner, or from the person by whom such engagement was so made, in the same manner as other debts due to the Secretary of State for India in Council, or in the same manner and by the same form and process in which wages due to the distressed seaman would be recoverable by him.

Mode of recovering such wages and expenses.

Local Government may authorize persons to recover same.

81. (1) The Local Government may, by notification in the local official Gazette, authorize, either generally or specially, such persons as it thinks fit to sue for any such expenses and wages and recover the same.

(2) Every person so authorized shall be entitled to sue and recover accordingly and shall be deemed to be a person filling a public office within the meaning of clause (7) of section 57 of the Indian Evidence Act, 1872.

1 of 1872.

82. When any such expenses and wages are due to or in respect of a distressed seaman (not being an Indian subject of His Majesty) belonging to a British ship registered in British India, they may, instead of being recovered by a person authorized under section 81, be recovered by the Board of Trade in manner provided by section 42 of the Merchant Shipping Act, 1906, and when so recovered shall be paid by the said Board to the Secretary of State for India in Council.

Board of Trade may recover such amount from master or owner in certain cases.

6 Edw. 7,
c. 48.

83. In all proceedings under this Part, whether in British India or elsewhere, the production of a certificate signed by the local authority by which any distressed seaman named therein was relieved, or any expenses were incurred, under this Part, to the effect that such seaman was in distress, and that such expenses were incurred in respect of such seaman, shall be sufficient evidence that such seaman was relieved, conveyed home or buried, as the case may be, at the expense of the revenue of India.

84. The Governor-General in Council may make rules to determine under what circumstances and subject to what conditions distressed seamen may be relieved and provided with passages under this Part, and generally to carry out the provisions of this Part regarding distressed seamen.

Power of Governor-General in Council to make rules.

Provisions, Health and Accommodation.

85. (1) If three or more of the crew of a British ship consider that the provisions or water for the use of the crew are at any time of bad quality, unfit for use or deficient in quantity, they may complain thereof to any shipping-master or other officer duly appointed in this behalf by the Local Government, and the shipping-master or other officer may either examine the provisions or water complained of or cause them to be examined.

(2) If the officer or person making the examination finds that the provisions or water are of bad quality and unfit for use or deficient in quantity, he shall signify it in writing to the master of the ship.

(3) If the master does not thereupon provide other proper provisions or water in lieu of any so signified to be of bad quality and unfit for use, or does not procure the requisite quantity of any provisions or water so signified to be deficient in quantity, or uses any provisions or water so signified to be of bad quality and unfit for use, he shall be liable for each offence to a fine which may extend to two hundred rupees.

(4) The officer directing or the person making the examination shall enter a statement of the result of the examination in the official log-book, and shall, if he is not the shipping-master, send a report thereof to the shipping-master, and that report shall be admissible in evidence in any legal proceeding.

(5) If the said officer certifies in that statement that there was no reasonable ground for the complaint, each of the complainants shall be liable to forfeit to the owner out of his wages a sum not exceeding one week's wages.

Allowance for
short or bad provi-
sions.

86. (1) In either of the following cases—

(i) if during the voyage the allowance of any of the provisions for which a seaman has by his agreement stipulated is reduced, (except in accordance with any regulations for reduction by way of punishment contained in the agreement with the crew, and also except for any time during which the seaman wilfully and without sufficient cause refuses or neglects to perform his duty or is lawfully under confinement for misconduct either on board or on shore); or

(ii) if it is shown that any of those provisions are or have during the voyage been bad in quality or unfit for use;

the seaman shall receive by way of compensation for that reduction or bad quality according to the time of its continuance the following sums to be paid to him in addition to and to be recoverable as wages:—

(a) if his allowance is reduced by not more than one-third of the quantity specified in the agreement a sum not exceeding three annas in the case of a European seaman or other person shipped on the same footing as a European seaman, or one anna in the case of a lascar or native seaman;

(b) if his allowance is reduced by more than one-third of such quantity, six annas in the case of a European seaman or other person shipped on the same footing as a European seaman, or two annas in the case of a lascar or native seaman;

(c) in respect of such bad quality as aforesaid, a sum not exceeding eight annas in the case of a European seaman or other person shipped on the same footing as a European seaman, or three annas in the case of a lascar or native seaman.

(2) If it is shown to the satisfaction of the Court before which the case is tried that any provisions, the allowance of which has been reduced, could not be procured or supplied in proper quantities, and that proper and equivalent substitutes were supplied in lieu thereof, the Court shall take those circumstances into consideration and modify or refuse the compensation as the justice of the case requires.

87. (1) All foreign-going British ships and all home trade ships of more than three hundred tons burden shall have always on board a sufficient supply of medicines and appliances suitable for diseases and accidents likely to happen on sea voyages according to such scale as is from time to time issued by the Local Government with the approval of the Governor-General in Council and published in the local official Gazette.

(2) If any requirement in this section with respect to the provision of medicines and appliances is not complied with in the case of any ship, the owner or master of that ship shall for each offence be liable to a fine which may extend to two hundred rupees, unless he can prove that the non-compliance was not caused by his inattention, neglect or wilful default.

(3) This section shall not apply to ships navigating between the United Kingdom and any port in British India and to which section 200 of the Merchant Shipping Act, 1894, applies.

57 & 58 Vict.,
c. 60.

88. The master of a ship shall keep on board proper weights and measures for determining the quantities of the several provisions and articles served out and shall allow the same to be used at the time of serving out the provisions and articles in the presence of witnesses whenever any dispute arises about the quantities. If the master of a ship fails without reasonable cause to comply with this section, he shall for each offence be liable to a fine which may extend to one hundred rupees.

Weights and mea-
sures on board.

89. (1) If the master of, or a seaman or apprentice belonging to, a ship registered in British India receives any hurt or injury in the service of the ship, the expense of providing the necessary surgical and medical advice and attendance and medicine, and also the expenses of the maintenance of the master, seaman or apprentice until he is cured or dies or is brought back to the port from which he was shipped or other port agreed upon, and of his conveyance to that port, and, in case of death, the expense, if any, of his burial, shall be defrayed by the owner of the ship without any deduction on that account from his wages.

Expenses of medi-
cal attendance in
case of illness.

(2) Where any expenses referred to in this section have been paid by the master, seaman, or apprentice himself, the same may be recovered as if they were wages duly earned, and, if any such expenses are paid or allowed out of any money forming part of the revenues of India, the amount shall be a charge upon the ship and may be recovered with full costs of suit by the Secretary of State for India in Council.

90. (1) Every place in a British ship which is occupied by seamen or apprentices engaged under this Act and appropriated for their use shall have—

Accommodation
for seamen.

(a) for each European seaman or apprentice or other person shipped on the same footing as a European seaman, a space of ten superficial feet if the place be not less than six feet in height from deck to deck, or sixty cubic feet if the height from deck to deck be less than six feet;

(b) for each lascar or native seaman or person shipped on the same footing as a lascar, six superficial and thirty-six cubic feet and, if the place allotted be under the top gallant fore-castle, such fore-castle deck shall be not less than four feet six inches above the one below it.

(2) In every case the place shall be below a well caulked and substantial deck, securely constructed, properly ventilated and properly protected from weather and sea.

(3) If any of the foregoing requirements of this section is not complied with in the case of any ship, the owner of the ship shall for each offence be liable to a fine which may extend to two hundred rupees.

(4) Every place so occupied and appropriated shall be kept free from goods and stores of any kind not being the personal property of the crew in use during the voyage.

(5) If any such place is not so kept free the master shall for each offence be liable to a fine which may extend to one hundred rupees.

91. (1) The shipping-master or deputy shipping-master at any port in British India may enter at any time on board any ship upon which seamen have been shipped at that port and inspect the medicines and appliances and the accommodation for seamen with which the ship is required to be provided by or under this Act or the Merchant Shipping Acts.

Inspection of
medicines and appli-
ances and accom-
modation.

(2) If, on inspection, the provisions or water on board any ship are found to be of bad quality and unfit for use or deficient in quantity, the shipping-master shall proceed as provided in section 85, and the fine prescribed by the said section, shall be incurred by any default of the master of the ship in respect of such provisions or water and the ship shall be detained until the defects are remedied to the satisfaction of the shipping-master.

Facilities for making complaints.

92. (1) If a seaman or apprentice, whilst on board ship, states to the master that he desires to make complaint to a Magistrate against the master or any of the crew, the master shall, so soon as the service of the ship will permit,

Facilities for
making complaints.

(a) if the ship is then at a place where there is a Magistrate, after such statement, and

(b) if the ship is not then at such place, after her first arrival at such a place, allow the complainant to go ashore or send him ashore in proper custody so that he may be enabled to make the complaint.

(2) If the master of a ship fails without reasonable cause to comply with the provisions of this section, he shall for each such offence be liable to a fine which may extend to one hundred rupees.

Protection of Seamen from Imposition.

93. Subject to the provisions of this Act an assignment or sale of salvage payable to a seaman or apprentice made prior to the accruing thereof shall not bind the person making the same, and a power-of-attorney or authority for the receipt of any such salvage shall not be irrevocable.

Assignment or
sale of salvage in-
valid.

No debt exceed-
ing three rupees
recoverable till end
of voyage.

94. A debt exceeding in amount three rupees incurred by any seaman after he has engaged to serve shall not be recoverable until the service agreed for is concluded.

95. If a person demands or receives from a seaman or apprentice payment in respect of his board or lodging in the house of that person for a longer period than the seaman or apprentice has actually resided or boarded therein, that person shall for each offence be liable to a fine which may extend to one hundred rupees.

Penalty for overcharges by lodging-house-keepers.

96. (1) If a person receives or takes into his possession or under his control any money or effects of a seaman or apprentice and does not return the same or pay the value thereof when required by the seaman or apprentice subject to such deduction as may be justly due to him from the seaman or apprentice in respect of board or lodging or otherwise or absconds therewith, he shall for each offence be liable to a fine which may extend to one hundred rupees.

Penalty for detaining seamen's effects.

(2) Any Magistrate imposing a fine under this section may direct the amount of such money or the value of the effects subject to such deduction as aforesaid, if any, or the effects themselves to be forthwith paid or delivered to the seaman or apprentice.

97. If within twenty-four hours after the arrival of a ship at a port in British India a person then being on board the ship solicits a seaman to become a lodger at the house of any person letting lodgings for hire or takes out of the ship any effects of a seaman except under the personal direction of the seaman and with the permission of the master, he shall for each offence be liable to a fine which may extend to fifty rupees.

Penalty for solicitations by lodging-house-keepers.

98. Where a ship is about to arrive or if arriving or has arrived at the end of the voyage and any person not being in His Majesty's service or not being duly authorized by law for the purpose goes on board the ship without the permission of the master before the seaman lawfully leave the ship at the end of their engagement or are discharged (whichever happens last) that person shall for each offence be liable to a fine which may extend to two hundred rupees, and the master of the ship may take him into custody and deliver him up forthwith to a police officer to be taken before a magistrate to be dealt with according to the provisions of this Act.

Penalty for being on board ship without permission before seamen leave.

Provisions as to Discipline.

99. If a master, seaman or apprentice belonging to a British ship by wilful breach of duty or by neglect of duty or by reason of drunkenness—

Misconduct endangering life or ship.

(a) does any act tending to the immediate loss, destruction or serious damage of the ship or tending immediately to endanger the life or limb of a person belonging to or on board the ship; or

(b) refuses or omits to do any lawful act proper and requisite to be done by him for preserving the ship from immediate loss, destruction or serious damage or for preserving any person belonging to or on board the ship from immediate danger to life or limb;

he shall be liable for every such offence to a fine which may extend to one thousand rupees or to imprisonment for a term which may extend to two years, or to both.

100. If a seaman lawfully engaged or an apprentice commits any of the following offences, he shall, notwithstanding anything in the Code of Criminal Procedure, 1898, be liable to be tried in a summary manner and to be punished as follows:—

(i) if he deserts from his ship he shall be guilty of the offence of desertion and be liable to forfeit all or any part of the effects he leaves on board and of the wages which he has then earned and also, if the desertion takes place at any place not in British India, to forfeit all or any part of the wages which he may earn in any other ship in which he may be employed until his next return to British India, and to satisfy any excess of wages paid by the master or owner of the ship from which he deserts to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be paid to him, and also he shall be liable to imprisonment for a term which may extend to twelve weeks ;

(ii) if he neglects or refuses without reasonable cause to join his ship or to proceed to sea in his ship or is absent without leave at any time within twenty-four hours of the ship's sailing from a port either at the commencement or during the progress of a voyage, or is absent at any time without leave and without sufficient reason from his ship or from his duty, he shall, if the offence does not amount to desertion or is not treated as such by the master, be guilty of the offence of absence without leave and be liable to forfeit out of his wages a sum not exceeding two days' pay and in addition for every twenty-four hours of absence either a sum not exceeding six days' pay, or any expenses properly incurred in hiring a substitute, and also he shall be liable to imprisonment for a term which may extend to ten weeks.

101. (1) If a seaman or apprentice is guilty of the offence of desertion or of absence without leave, or otherwise absents himself from his ship without leave, the master, any mate, the owner, ship's husband or consignee of the ship may, with or without the assistance of police officers, convey him on board his ship, and those officers are hereby directed to give assistance if required.

(2) If the seaman or apprentice so requires he shall first be taken before some Court capable of taking cognizance of the matter to be dealt with according to law.

(3) If it appears to the Court before whom the case is brought that the seaman or apprentice has been conveyed on board or taken before the Court on improper or insufficient grounds, that Court may inflict on the master, mate, owner, ship's husband or consignee, as the case may be, a fine which may extend to two hundred rupees.

(4) The infliction of such fine shall be a bar to any action for false imprisonment in respect of the arrest.

(5) If a seaman or apprentice is imprisoned for having been guilty of the offence of desertion or of absence without leave, or for having

committed any other breach of discipline, and during his imprisonment and before his engagement is at an end his services are required on board his ship, any Magistrate may, on the application of the master or of the owner or his agent, notwithstanding that the period of his imprisonment is not at an end, cause the seaman or apprentice to be conveyed on board his ship for the purpose of proceeding on the voyage, or to be delivered to the master or any mate of the ship, or to the owner or his agent, to be by them so conveyed.

102. Where a seaman or apprentice is brought before a Court on the ground of the offence of desertion or of absence without leave or of otherwise absenting himself without leave, the Court, if the master or the owner, or his agent, so requires, may, in lieu of committing him to prison, cause him to be conveyed on board his ship for the purpose of proceeding on the voyage or deliver him to the master or any mate of the ship or the owner or his agent, to be by them so conveyed, and may in such case order any costs and expenses properly incurred by or on behalf of the master or owner by reason of the conveyance to be paid by the offender and if necessary to be deducted from any wages which he has then earned or by virtue of his then existing engagement may afterwards be earned.

103. If a seaman lawfully engaged or an apprentice commits any of the following offences (in this Act referred to as **General offences against discipline.** offences against discipline), he shall, notwithstanding anything in the Code of Criminal Procedure, 1898, be liable to be tried in a summary way and to be punished as follows, namely :—

(i) if he quits the ship without leave after her arrival at her port of delivery and before she is placed in security, he shall be liable to forfeit out of his wages a sum not exceeding one month's pay ;

(ii) if he is guilty of wilful disobedience to any lawful command, he shall be liable to imprisonment for a period which may extend to four weeks and shall also be liable to forfeit out of his wages a sum not exceeding two days' pay ;

(iii) if he is guilty of continued wilful disobedience to lawful commands or continued wilful neglect of duty, he shall be liable to imprisonment for a term which may extend to twelve weeks, and shall also be liable for every twenty-four hours' continuance of such disobedience or neglect for a sum not exceeding six days' pay or any expenses which may have been properly incurred in hiring a substitute ;

(iv) if he assaults the master or any mate or a certificated engineer of the ship, he shall be liable to imprisonment for a term which may extend to twelve weeks ;

(v) if he combines with any of the crew to disobey lawful commands or to neglect duty or to impede the navigation of the ship or the progress of the voyage, he shall be liable to imprisonment for a term which may extend to twelve weeks ;

(vi) if he wilfully damages his ship or commits criminal misappropriation or breach of trust in respect of or wilfully damages any of her

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stores or cargo, he shall be liable to forfeit out of his wages a sum equal to the loss thereby sustained, and also to imprisonment for a term which may extend to twelve weeks ;

(vii) if he is convicted of any act of smuggling whereby loss or damage is occasioned to the master or owner of the ship, he shall be liable to pay to that master or owner a sum sufficient to reimburse the loss or damage, and the whole or a proportionate part of his wages may be retained in satisfaction on account of that liability without prejudice to any further remedy.

104. (1) If a seaman on or before being engaged wilfully and fraudulently makes a false statement of the name of his last ship or alleged last ship or wilfully and fraudulently makes a false statement of his own name, he shall for each offence be liable to a fine which may extend to fifty rupees.

Penalty for the false statement as to last ship or name.

(2) The fine may be deducted from any wages the seaman may earn by virtue of his engagement as aforesaid and shall, subject to reimbursement of the loss or expenses, if any, occasioned by any desertion previous to the engagement, be paid and applied in the same manner as other fines under this Act.

105. If any offence within the meaning of this Act of desertion or absence without leave or against discipline is committed or if any act of misconduct is committed for which the offender's agreement imposes a fine and it is intended to enforce the fine,—

Entry of offences in official log.

(i) an entry of the offence or act shall be made in the official log-book and signed by the master and also by the mate or one of the crew ; and

(ii) the offender, if still in the ship, shall before the next subsequent arrival of the ship at any port, or, if she is at the time in port, before her departure therefrom, either be furnished with a copy of the entry or have the same read over distinctly and audibly to him and may thereupon make such reply thereto as he thinks fit ; and

(iii) a statement of a copy of the entry having been so furnished or the entry having been so read over and in either case the reply, if any, made by the offender shall likewise be entered and signed in manner aforesaid ; and

(iv) in any subsequent legal proceedings the entries by this section required shall, if practicable, be produced or proved, and, in default of that production or proof, the Court hearing the case may, in its discretion, refuse to receive evidence of the offence or act of misconduct.

106. (1) Whenever any seaman or apprentice not shipped in British India deserts or otherwise absents himself in British India without leave from a British ship in which he is engaged to serve, the master of the ship shall within forty-eight hours of discovering such desertion or absence report the same to the shipping-master or to such other officer as the Local Government appoints in this behalf, unless, in the meantime, the deserter or absentee returns.

Report of desertions and absences without leave.

(2) Any master wilfully neglecting to comply with the provisions of this section shall be liable to a fine which may extend to one hundred rupees, or to imprisonment for a term which may extend to one month or to both.

107. (1) In every case of desertion from a ship registered in British India whilst such ship is at any place out of British India, the master shall produce the entry of the desertion in the official log-book to the person authorized by the Merchant Shipping Act, 1906, to grant certificates for leaving seamen behind abroad; and that person shall thereupon make and certify a copy of the entry.

(2) The master shall forthwith transfer such copy to the shipping-master at the port at which the seaman or apprentice was shipped, and the shipping-master shall, if required, cause the same to be produced in any legal proceeding.

(3) Such copy, if purporting to be so made and certified as aforesaid, shall, in any legal proceeding relating to such desertion, be admissible in evidence.

108. (1) Whenever a question arises whether the wages of any seaman or apprentice are forfeited for desertion from a ship, it shall be sufficient for the person insisting on the forfeiture to show that the seaman or apprentice was duly engaged in or belonged to the ship, and either that he left the ship before the completion of the voyage or engagement or, if the voyage was to terminate in British India and the ship has not returned, that he is absent from her and that an entry of his desertion has been duly made in the official log-book.

(2) The desertion shall thereupon, so far as relates to any forfeiture of wages under this part, be deemed to be proved unless the seaman or apprentice can produce a proper certificate of discharge or can otherwise show to the satisfaction of the Court that he had sufficient reasons for leaving his ship.

109. (1) Where any wages or effects are under this Act forfeited for desertion from a ship, they shall be applied towards reimbursing the expenses caused by the desertion to the master or the owner of the ship and, subject to that re-imbursement shall be paid into the public treasury and carried to the account of Government.

(2) For the purposes of such re-imbursement the master or the owner or his agent may, if the wages are earned subsequent to the desertion, recover them in the same manner as the deserter could have recovered them if not forfeited; and the Court in any legal proceeding relating to such wages may order them to be paid accordingly.

(3) Where wages are forfeited under the foregoing provisions of this Act in any case other than for desertion, the forfeiture shall, in the absence of any specific provision to the contrary, be for the benefit of the master or owner by whom the wages are payable.

110. Any question concerning the forfeiture of or deductions from the wages of a seaman or apprentice may be determined in any proceeding lawfully instituted with respect to those wages notwithstanding that the offence in respect of which the question arises, though by this Act made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding.

Decision of questions of forfeiture and deduction in suits for wages.

111. (1) If a seaman contracts for wages by the voyage or by the run or by the share and not by the month or other stated period of time, the amount of forfeiture to be incurred under this Act shall be an amount bearing the same proportion to the whole wages or share, as a month or any other period hereinbefore mentioned in fixing the amount of forfeiture (as the case may be) bears to the whole time spent in the voyage or run.

Ascertainment of amount of forfeiture out of wages.

(2) If the whole time spent in the voyage or run does not exceed the period for which the pay is to be forfeited, the forfeiture shall extend to the whole wages or share.

Payment of fines imposed under agreement to shipping-master.

112. (1) Every fine imposed on a seaman for any act of misconduct for which his agreement imposes a fine shall be deducted and paid over as follows, namely :—

(i) if the offender is discharged at any port or place in British India, and the offence and such entries in respect thereof as aforesaid are proved, in the case of a foreign-going ship to the satisfaction of the shipping-master before whom the offender is discharged, and in the case of a home-trade ship to the satisfaction of the shipping-master at or nearest to the place at which the crew is discharged, the master or owner shall deduct such fine from the wages of the offender and pay the same over to such shipping-master ; and

(ii) if before the final discharge of the crew in British India, any such offender as aforesaid enters into any of His Majesty's ships or is discharged at any place not in British India, and the offence and such entries as aforesaid are proved to the satisfaction of the officer in command of the ship into which he so enters or of the consular officer, officer of Customs, or other person by whose sanction he is so discharged, the fine shall thereupon be deducted as aforesaid, and an entry of such deduction shall then be made in the official log-book (if any) and signed by such officer or other person ; and on the return of the ship to British India, the master or owner shall pay over such fine, in the case of foreign-going ships to the shipping-master before whom the crew is discharged, and in the case of home-trade ships to the shipping-master at or nearest to the place at which the crew is discharged.

(2) If any master or owner neglects or refuses so to pay over the fine he shall for each such offence incur a penalty not exceeding six times the amount of the fine retained by him.

(3) An act of misconduct for which any such fine has been inflicted and paid shall not be otherwise punished under the provisions of this Act.

113. If a person by any means whatever persuades or attempts to persuade a seaman or apprentice to neglect or refuse to join or proceed to sea in or desert from his ship, or otherwise to absent himself from his duty, he shall for each offence in respect of each seaman or apprentice be liable to a fine which may extend to one hundred rupees.

114. If a person wilfully harbours or secretes a seaman or apprentice who has wilfully neglected or refused to join or has deserted from his ship, knowing or having reason to believe the seaman or apprentice to have so done, he shall for every seaman or apprentice so harboured or secreted be liable to a fine which may extend to one hundred rupees.

115. (1) If a person secretes himself and goes to sea in a ship without the consent of either the owner, consignee or master, or of a mate, or of the person in charge of the ship or of any other person entitled to give that consent, he shall be liable to a fine which may extend to two hundred rupees, or to imprisonment for a term which may extend to four weeks.

(2) Every sea-faring person whom the master of a ship is under the authority of this Act or any other law compelled to take on board and convey, and every person who goes to sea in a ship without such consent as aforesaid, shall, so long as he remains in the ship, be subject to the same laws and regulations for preserving discipline and to the same fines and punishments for offences constituting or tending to a breach of discipline as if he were a member of and had signed the agreement with the crew.

116. (1) If any seaman or apprentice who is not shipped in British India is imprisoned on complaint made by or on behalf of the master or owner of the ship or for any offence for which he has been sentenced to imprisonment for a term not exceeding one month, then—

(a) while such imprisonment lasts, no person shall, without the previous sanction in writing of the Local Government or of such officer as it may appoint in this behalf, engage any native of India to serve as a seaman on board such ship; and

(b) the Local Government or such officer as it may appoint in this behalf may tender such seaman or apprentice to the master or owner of the ship in which he is engaged to serve, and if such master or owner, without assigning reasons satisfactory to the Local Government or to such officer as aforesaid, refuses to receive him on board, may require such master or owner to deposit in the local shipping office—

(i) the wages due to such seaman or apprentice and his money and effects; and

(ii) such sum as may, in the opinion of the Local Government or such officer as aforesaid, be sufficient to defray the cost

of the passage of such seaman or apprentice to the port at which he was shipped according to the scale of costs usual in the case of distressed seamen.

(2) If any person wilfully disobeys the prohibition contained in clause (a) of sub-section (1), he shall be liable to imprisonment for a term which may extend to three months, or to a fine which may extend to one thousand rupees, or to both.

(3) Any master or owner refusing or neglecting to deposit any wages, money, effects or sum when so required by this section, shall be liable to a fine which may extend to five hundred rupees.

117. If any seaman or apprentice who is not shipped in British India is imprisoned for any offence for which he has

Power to send on board seaman or apprentice not shipped in British India who is undergoing imprisonment.

been sentenced to imprisonment for a term not exceeding one month, and if during such imprisonment and before his engagement is at an end his services are required on board his ship, any Magistrate may, at the request of the master or owner or his agent, cause the seaman or apprentice to be conveyed on board the

ship for the purpose of proceeding on the voyage or to be delivered to the master or any mate of the ship or to the owner or his agent to be by them so conveyed, notwithstanding that the period for which he was sentenced to imprisonment has not terminated.

118. (1) If during the progress of a voyage the master of any ship registered in British India is removed or superseded

On change of master, documents to be handed over to successor.

or for any other reason quits the ship and is succeeded in the command by some other person, he shall deliver to his successor the various documents relating to the navigation of the ship and the crew thereof

which are in his custody and shall in default be liable to a fine which may extend to one thousand rupees.

(2) Such successor shall immediately on assuming the command of the ship enter in the official log-book a list of the documents so delivered to him.

Leaving Seamen or Apprentices in British India.

119. (1) No seaman or apprentice who was not shipped in British India shall be discharged at any port in British India

Discharge or leaving behind in British India of seamen or apprentices not shipped in British India.

without the previous sanction in writing of such officer as the Local Government appoints in this behalf. Such sanction shall be given or withheld at the discretion of the officer so appointed, but whenever it is withheld, the reasons for so withholding it shall be recorded by him in writing.

(2) If any person discharges a seaman or apprentice in wilful disobedience to the prohibition contained in sub-section (1), he shall be liable to imprisonment for a term which may extend to three months, or to a fine which may extend to one thousand rupees, or to both.

Official logs.

Official logs to be kept and to be dated.

120. (1) An official log shall be kept in every ship registered in British India except home-trade ships not exceeding three hundred tons burden in the form sanctioned by the Local Government.

(2) The official log may, at the discretion of the master or owner, be kept distinct from or united with the ordinary ship's log so that in all cases the spaces in the official log-book be duly filled up.

(3) An entry required by this Act in the official log-book shall be made as soon as possible after the occurrence to which it relates, and, if not made on the same day as that occurrence, shall be made and dated so as to show the date of the occurrence and of the entry respecting it; and if made in respect of an occurrence happening before the arrival of the ship at her final port of discharge, shall not be made more than twenty-four hours after that arrival.

(4) Every entry in the official log-book shall be signed by the master and by the mate or some other of the crew and also—

(a) if it is an entry of injury or death, shall be signed by the Surgeon or medical practitioner on board, if any; and

(b) if it is an entry of wages due to or of the sale of the effects of a seaman or apprentice who dies, shall be signed by the mate and by some member of the crew besides the master; and

(c) if it is an entry of wages due to a seaman who enters His Majesty's naval service, shall be signed by the seaman or by the officer authorized to receive the seaman into that service.

(5) Every entry made in an official log-book in the manner provided by this Act shall be admissible in evidence.

Entries required in official log-book.

121. The master of a ship for which an official log is required shall enter or cause to be entered in the official log-book the following matters, namely:—

(i) every conviction by a legal tribunal of a member of his crew, and the punishment inflicted;

(ii) every offence committed by a member of his crew for which it is intended to prosecute or to enforce a forfeiture or exact a fine together with such statement concerning the reading over of that entry, and concerning the reply (if any) made to the charge as is by this Act required;

(iii) every offence for which punishment is inflicted on board and the punishment inflicted;

(iv) a statement of the conduct, character and qualifications of each of his crew, or a statement that he declines to give an opinion on those particulars;

(v) every case of illness or injury happening to a member of the crew with the nature thereof, and the medical treatment adopted (if any);

(vi) every case of death happening on board and the cause thereof;

(vii) every birth happening on board with the sex of the infant and the names of the parents;

(viii) every marriage taking place on board with the names and ages of the parties ;

(ix) the name of every seaman or apprentice who ceases to be a member of the crew otherwise than by death, with the place, time, manner and cause thereof ;

(x) the wages due to any seaman who enters His Majesty's naval service during the voyage ;

(xi) the wages due to any seaman or apprentice who dies during the voyage and the gross amount of all deductions to be made therefrom ;

(xii) the sale of the effects of any seaman or apprentice who dies during the voyage, including a statement of each article sold and of the sum received for it ;

(xiii) every collision with any other ship and the circumstances under which the same occurred.

122. (1) If an official log-book is not kept in the manner required by this Act, or if an entry directed by this Act to be made therein is not made at the time and in the manner directed by this Act, the master shall, if no other penalty is provided by this Act, be liable for each offence to a fine which may extend to fifty rupees.

Offences in respect of official logs.

(2) If any person makes or procures to be made or assists in making any entry in any official log-book in respect of any occurrence happening previously to the arrival of the ship at her final port of discharge more than twenty-four hours after such arrival, he shall for each offence be liable to a fine which may extend to three hundred rupees.

(3) If any person wilfully destroys or mutilates or renders illegible any entry in any official log-book or wilfully makes or procures to be made or assists in making a false or fraudulent entry in or omission from an official log-book, he shall be liable to imprisonment for a term which may extend to one year.

123. (1) The master of every foreign going ship shall, within forty-eight hours after the ship's arrival at her final port of destination in British India or upon the discharge of the crew, whichever first happens, deliver the official log-book of the voyage to the shipping-master before whom the crew is discharged.

Delivery of official logs to shipping masters.

(2) The master or owner of every home-trade ship, for which an official log is required to be kept, shall, within twenty-one days of the thirtieth day of June and the thirty-first day of December in every year, transmit or deliver to some shipping-master in British India the official log-book for the preceding half-year.

(3) If the master or owner of a ship fails without reasonable cause to comply with this section, he shall be liable to a fine which may extend to two hundred rupees.

124. (1) Where, by reason of a transfer of ownership or change of employment of a ship, the official log ceases to be required in respect of the ship or to be required on the same date, the master or owner of the ship shall, if the ship is then in British India, within one month, and, if she is elsewhere, within six months, after the cessation, deliver or transmit to the shipping-master at the port to which the ship belonged the official log-book, if any, duly made out at the time of the cessation.

(2) If a ship is lost or abandoned the master or owner thereof shall, if practicable, and as soon as possible, deliver or transmit to the shipping-master at the port to which the ship belonged the official log-book, if any, duly made out to the time of the loss or abandonment.

(3) If the master or owner of the ship fails without reasonable cause to comply with the provisions of this section, he shall for each offence be liable to a fine which may extend to one hundred rupees.

PART III.

PASSENGER SHIPS.

Survey of Passenger Ship.

125. (1) No steam-ship shall carry more than twelve passengers between places in British India or to or from any place in British India from or to any place out of British India, unless she has a certificate of survey under this Part in force and applicable to the voyage on which she is about to proceed or the service on which she is about to be employed.

No steam-ship to carry passengers without a certificate of survey.

(2) Nothing in sub-section (1) shall apply to—

(a) any steam-ship having a certificate of survey granted by the Board of Trade, or by the Government of any part of His Majesty's dominions where such certificate has been declared under section 284 of the Merchant Shipping Act, 1894, to be of the same force as if granted under that Act, unless it appears from the certificate that it is inapplicable to the voyage on which the steam-ship is about to proceed or the service on which she is about to be employed, or unless there is reason to believe that the steam-ship has, since the grant of the certificate, sustained injury or damage or been found unseaworthy or otherwise inefficient; or

57 & 58 Vict.,
c. 60.

(b) any steam-ship having a certificate of survey granted under the Inland Steam-vessels Act, 1917, in force and applicable to the voyage on which the steam-ship is about to proceed or the service on which she is about to be employed; or

(c) any steam-ship carrying passengers during the interval between the time at which her certificate of survey under this Part expires and the time at which it is first practicable to have the certificate renewed.

126. The Local Government may, with the previous sanction of the Governor-General in Council, by notification in the local official Gazette, declare that all or any of the provisions of this Part relating to the survey of steam-ships shall not apply in the case of any specified steam-ship or class of steam-ships, or shall apply thereto with such modifications as the Local Government may direct.

Power for Local Government to exempt certain steam-ships.

127. No officer of Customs shall grant a port-clearance, nor shall any pilot be assigned, to any steam-ship for which a certificate of survey is required by this Part until after the production by the owner or master thereof of a certificate under this Part in force and applicable to the voyage on which she is about to proceed and the service on which she is about to be employed.

No port clearance until certificate of survey produced.

128. If any steam-ship for which a certificate of survey is required by this Part leaves or attempts to leave any port of survey without a certificate, any officer of Customs or any pilot on board the steam-ship may detain her until she obtains a certificate.

Power to detain steam-ship not having certificate of survey.

129. The Local Government may appoint so many persons as it thinks fit to be surveyors for the purposes of this Part at such ports within the territories under its administration as it may appoint to be ports of survey.

Appointment of surveyors and ports of survey.

130. (1) For the purposes of a survey under this Part, any surveyor appointed under this Part may, at any reasonable time go on board a steam-ship, and may inspect the steam-ship and any part thereof, and the machinery, equipments or articles on board thereof :

Powers of surveyor.

Provided that he does not unnecessarily hinder the loading or unloading of the steam-ship, or unnecessarily detain or delay her from proceeding on any voyage.

(2) The owner, master and officers of the steam-ship shall afford to the surveyor all reasonable facilities for a survey, and all such information respecting the steam-ship and her machinery and equipments, or any part thereof, respectively, as he reasonably requires.

131. Before a survey under this Part is commenced, the owner or master of the steam-ship to be surveyed shall pay to such officer as the Local Government may appoint in this behalf—

Fees in respect of surveys.

(a) a fee calculated on the tonnage of the steam-ship according to the rates in Schedule II or according to any other prescribed rates ; and

(b) when the survey is to be made in any port of survey other than Calcutta, Madras, Bombay or Rangoon, such additional fee, in respect of the expense (if any) of the journey of the surveyor to the port, as the Local Government may, by notification in the local official Gazette, direct.

132. A survey under this Part shall ordinarily be made by one surveyor, but two surveyors may be employed if the Local Government, by order in writing, so directs, either generally in the case of all steamships at any port of survey, or specially in the case of any particular steam-ship or class of steam-ships at any such port.

Power for Local Government to direct that two surveyors be employed.

133. When a survey is made under this Part by two surveyors, each of the surveyors making the survey shall perform a prescribed portion of the duties assigned by this Part or the rules made thereunder to a surveyor making a survey.

Division of duties when two surveyors are employed.

134. When a survey under this Part is completed, the surveyor making it shall forthwith, if satisfied that he can with propriety do so, give to the owner or master of the steam-ship surveyed a declaration of survey in the prescribed form containing the following particulars, namely:—

Declaration of surveyor.

(a) that the hull and machinery of the steam-ship are sufficient for the service intended and in good condition ;

(b) that the equipments of the steam-ship and the certificates of the master, mate or mates, and engineer or engineers or engine-driver, are such and in such condition as are required by any law for the time being in force and applicable to the steam-ship ;

(c) the time (if less than one year) for which the hull, machinery and equipments of the steam-ship will be sufficient ;

(d) the limit (if any) beyond which, as regards the hull, machinery or equipments, the steam-ship is in the surveyor's judgment not fit to ply ;

(e) the number of passengers which the steam-ship is, in the judgment of the surveyor, fit to carry, distinguishing, if necessary, between the respective numbers to be carried on the deck and in the cabins and in different parts of the deck and cabins ; the number to be subject to such conditions and variations, according to the time of year, the nature of the voyage, the cargo carried or other circumstances, as the case requires ; and

(f) any other prescribed particulars.

135. (1) The owner or master to whom a declaration of survey is given shall, within fourteen days after the date of the receipt thereof, send the declaration to such officer as the Local Government may appoint in this behalf.

Sending of declaration by owner or master to Local Government.

(2) If he fails to do so, he shall forfeit a sum not exceeding five rupees for every day during which the sending of the declaration is delayed.

(3) The owner or master shall pay any sum so forfeited on the delivery of the certificate of survey.

136. (1) Upon receipt of a declaration of survey, the Local Government shall, if satisfied that the provisions of this Part have been complied with, cause a certificate, in duplicate, to be prepared and delivered, through such officer at the port at which the steam-ship was

Grant of certificate of survey by Local Government.

surveyed as the Local Government may appoint in this behalf, to the owner or master of the steam-ship surveyed, on his applying and paying the sums (if any) mentioned in this Part as payable on delivery of a certificate.

(2) A certificate granted under this section shall be in the prescribed form ; shall contain a statement to the effect that the provisions of this Part with respect to the survey of the steam-ship and the transmission of the declaration of survey in respect thereof have been complied with ; and shall set forth—

(a) the particulars concerning the steam-ship which clauses (c), (d) and (e) of section 134 require the declaration by the surveyor to contain ; and

(b) any other prescribed particulars.

(3) When a certificate is ready for delivery under this section, the Local Government shall cause notice thereof to be given by post or otherwise to the owner or master of the steam-ship to which the certificate relates.

(4) The Local Government may delegate to any person—

(a) the function, assigned to the Local Government by sub-section (1), of granting a certificate of survey under that sub-section ;

(b) the function, assigned to the Local Government by sub-section (3), of causing notice to be given of a certificate of survey being ready for delivery :

Provided, with respect to clause (a) of this sub-section, that no delegation of the function mentioned in that clause shall be construed to authorise the grant of a certificate of survey by the surveyor who gave the declaration of survey.

137. (1) If the surveyor or surveyors making a survey under this Act refuses or refuse to give a declaration of survey under section 134 with regard to any steam ship, or gives or give a declaration with which the owner or master of the steam-ship surveyed is dissatisfied, the Local Government may, on the application of the owner or master, and the payment by him of such fee not exceeding twice the amount of the fee for the previous survey, as the Local Government may require, direct two other surveyors appointed under this Part to survey the steam-ship,

(2) The surveyors so directed shall forthwith survey the steam-ship, and may, after the survey, either refuse to give a declaration or give such declaration as under the circumstances seems to them proper, and their decision shall be final.

Duration of certificate of survey.

138. A certificate of survey granted under this Part shall not be in force—

(a) after the expiration of one year from the date thereof ; or

(b) after the expiration of the period, if less than one year, for which the hull, boilers, engines or any of the equipments have been stated in the certificate to be sufficient ; or

(c) after notice has been given, by the Local Government, to the owner or master of the steam-ship to which the certificate relates that the Local Government has cancelled or suspended it.

Cancellation or suspension of certificate of survey by Local Government.

139. Any certificate of survey granted under this Part may be cancelled or suspended by a Local Government if it has reason to believe—

(a) that the declaration by the surveyor of the sufficiency and good condition of the hull, boilers, engines or any of the equipments of the steam-ship has been fraudulently or erroneously made; or

(b) that the certificate has otherwise been issued upon false or erroneous information; or

(c) that, since the making of the declaration, the hull, boilers, engines or any of the equipments of the steam-ship have sustained any injury, or have otherwise become insufficient.

Power to require delivery of expired or cancelled certificate of survey.

140. (1) The Local Government may require any certificate of survey granted under this Part which has expired, or has been cancelled or suspended, to be delivered up to such person as it directs.

(2) If the owner or master of a steam-ship without reasonable cause, neglects or refuses to deliver up a certificate when required to do so under this section, he shall be liable to a fine which may extend to one hundred rupees.

141. If the Local Government which cancels or suspends a certificate of survey granted under this Part is not the Local Government which or whose delegate granted the certificate, the Local Government cancelling or suspending the certificate shall report the fact of cancellation or suspension, together with the reasons thereof, to the Local Government which or whose delegate granted the certificate.

Report of cancellation or suspension of certain certificates.

142. (1) The owner or master of every steam-ship for which a certificate of survey has been granted under this Part shall forthwith, on the receipt of the certificate, cause one of the duplicates thereof to be affixed, and kept affixed so long as the certificate remains in force and the steam-ship is in use, on some conspicuous part of the steam-ship where it may be easily read by all persons on board thereof.

Certificate of survey to be affixed in conspicuous part of steam-ship.

(2) If the certificate is not so kept affixed, the owner and master of the steam-ship shall each be liable to a fine which may extend to one hundred rupees.

143. If a steam-ship on any voyage carries or attempts to carry passengers in contravention of section 125 or has on board or in any part thereof a number of passengers which is greater than the number set forth in the certificate of survey as the number of passengers which the steam-ship or the part thereof is fit to carry on that voyage, the owner and the master shall each be punishable with

Penalty for carrying passengers in contravention of the Act.

a fine which may extend to one thousand rupees, and also with an additional fine not exceeding twenty rupees for every passenger above the number so set forth, or, if the fare of any passenger on board exceeds twenty rupees, not exceeding double the amount of the fares of all the passengers above the number so set forth, reckoned at the highest rate of fare payable by any passenger on board; and if the master or any other officer of any steam-ship which carries or attempts to carry passengers in contravention of section 125 is a licensed pilot, he shall be liable to have his license as a pilot suspended or cancelled for any period by the Local Government.

144. (1) When a steam-ship requires to be furnished with a certificate of survey under this Part and the Local Government is satisfied, by the production of a certificate of survey attested by a British Consular Officer at the port where the survey was made, that the ship has been officially surveyed at a foreign port, and that the requirements of this Act are proved by that survey to have been substantially complied with the Local Government may, if it thinks fit, dispense with any further survey of the ship in respect of the requirements so complied with, and give a certificate which shall have the same effect as a certificate given after survey under this Part:

Steam-ships with foreign certificates of survey or certificates of partial survey.

Provided that this sub-section shall not apply in the case of a foreign steam-ship to an official survey at any foreign port with respect to which His Majesty has by Order in Council directed that section 363 of the Merchant Shipping Act, 1894, shall not apply.

57 & 58 Vict.,
c. 60.

(2) When the Local Government has by notification in the local official Gazette, declared that it is satisfied that an official survey at any foreign port specified in the declaration is such as to prove that the requirements of this Act have been substantially complied with, any person appointed by the Local Government in this behalf may exercise the power to dispense with a survey and to give a certificate conferred on the Local Government by sub-section (1) in the case of any steam-ship furnished with a valid certificate of survey granted at such foreign port and duly attested by the British Consular Officer at that port.

(3) The procedure prescribed in sub-section (1) shall be applicable in the case of steam-ships furnished with valid certificates of partial survey, including docking certificates, granted by the Board of Trade or any British Colonial Government, as if they were steam-ships furnished with like certificates of survey granted at foreign ports, subject to the modification that the powers of the Local Government under the said sub-section may be exercised by any person appointed by the Local Government in this behalf.

Power for Local Government to make rules as to surveys.

145. (1) The Local Government may, subject to the condition of previous publication and the sanction of the Governor-General in Council, make rules to regulate the making of surveys under this Part.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) declare the times and places at which, and the manner in which, surveys are to be made ;

(b) regulate the duties of the surveyor making a survey and, where two surveyors are employed, assign the respective duties of each of the surveyors employed ;

(c) declare the form in which the declarations of surveyors and certificates of survey under this Part are to be framed, and the nature of the particulars which are to be stated therein, respectively ; and

(d) fix the rates according to which the fees payable in respect of surveys are to be calculated in the case of all or any of the ports of survey within the territories under its administration.

Provisions in case of Wreck of Ship carrying Steerage Passengers.

57 & 58 Vict.,
c. 60.
Application of
certain sections of
Merchant Shipping
Act, 1894, in case of
wreck of ship carrying
steerage
passengers on cer-
tain voyages.

146. (1) The provisions contained in Part I of Schedule III (being sections 332, 333, 334 and 335 of the Merchant Shipping Act, 1894) are declared applicable to ships carrying steerage passengers upon the following voyages, namely :—

(a) voyages from the ports of Calcutta, Madras and Bombay to the British Colonies of Mauritius, Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, Natal, St. Kitts, Nevis and Fiji ;

(b) voyages from the ports of Calcutta, Madras and Bombay to the French Colonies of Reunion, Martinique, Goudeloupe and its dependencies, and Guiana ;

(c) voyages from the ports of Calcutta, Madras and Bombay to the Netherlands Colony of Dutch Guiana ;

(d) voyages from the ports of Calcutta, Madras and Bombay to the Danish Colony of St. Croix ;

(e) voyages under Part IV of this Act (which relates to native passenger ships) from Calcutta, Madras, Bombay, Karachi, Rangoon and other ports in British India, to the Straits Settlements, to the Protected Native States adjoining the Straits Settlements, to Australia and to ports in the Red Sea, Gulf of Aden or Persian Gulf and on the East Coast of of Africa.

(2) This section shall not come into operation until His Majesty's pleasure thereon has been publicly signified by notification in the Gazette of India.

(3) On such signification of such pleasure, the Indian Sea Passengers Act, 1885, shall be repealed.

PART IV.

NATIVE PASSENGER SHIPS AND PILGRIM SHIPS.

Application of
Part. **147.** (1) This Part applies—

(a) to all subject of His Majesty within the dominions of Princes and States in India ;

(b) to all Indian subjects of His Majesty without and beyond British India.

(2) But the provisions of this Part relating to native passenger ships do not apply—

(a) to any steam-ship not carrying as passengers more than sixty natives of Asia or Africa,

(b) to any ship not intended to carry natives of Asia or Africa as passengers to or from any port in British India, or

(c) to any ships to which the provisions of the Inland Steam Vessels Act, 1917, are applicable. I of 1917.

(3) Notwithstanding anything in sub-sections (1) and (2), the Local Government may, with the previous sanction of the Governor-General in Council, declare all or any of the provisions of this Part relating to native passenger ships to apply to sailing-ships, or any class of sailing-ships, carrying as passengers more than fifteen natives of Asia or Africa, and to steam-ships, or any class of steam-ships, carrying as passengers more than thirty such persons.

148. (1) The Local Government, with the previous sanction of the Governor-General in Council, may, subject to such condition as it thinks fit, exempt any ship or class of ships from any provision of this Part relating to native passenger ships.

Power to exempt ship from provisions of Part IV.

(2) In imposing a condition under this section the Local Government may direct that a breach of it shall be punishable with fine which may extend to two hundred rupees, and when the breach is a continuing breach with a further fine which may extend to twenty rupees for every day after the first during which the breach continues.

Definitions.

149. In this Part unless there is anything repugnant in the subject or context,—

(1) "native passenger" means a passenger by a ship who is a native of Asia or Africa of the age of twelve years or upwards and is not on the articles of the ship as one of the crew; but it does not include either a passenger in attendance on a person who is not a native of Asia or Africa or a child under one year of age; and in the computation of passengers for any of the purpose of this Part, two persons of the age of one year or upwards and under the age of twelve years shall be reckoned as one passenger;

(2) "native passenger ship" means, save as otherwise provided in this Part, a ship carrying more than thirty native passengers;

(3) "pilgrim" means a Muhammadan passenger going to, or returning from, the Hedjaz; but it does not include a child under one year of age, and, in the computation of pilgrims for all or any of the purposes of this Act, the Governor-General in Council may, by notification in the Gazette of India, direct that two persons of the age of one year or upwards and under the age of twelve years shall be reckoned as one pilgrim.

Explanation I.—A Muhammadan passenger who has embarked with the intention of going to the Hedjaz, but is returning without having

actually landed there, shall be deemed to be a pilgrim for the purposes of this Act :

Explanation II.—Every passenger, whether a pilgrim or not, on board a pilgrim ship shall be deemed to be a pilgrim for the purposes of this Part ;

(4) " pilgrim ship " means a ship conveying or about to convey pilgrims from or to any port in British India to or from any port in the Red Sea other than Suez :

Provided that no ship carrying passengers other than pilgrims of the lowest class and having on board pilgrims of the lowest class in a less proportion than one pilgrim for every one hundred tons of the gross tonnage of the ship shall be deemed to be a pilgrim ship within the meaning of this Act.

Explanation.—" A pilgrim of the lowest class " is a pilgrim for whom no separate accommodation in any cabin, state-room or saloon is reserved ;

(5) " voyage " means the whole distance between the ship's port or place of departure and her final port or place of arrival ;

(6) " Chief Customs-officer " means the chief executive officer of sea-customs in any port or place to which this Part applies.

General Provisions as to Native Passenger and Pilgrim Ships.

150. (1) A native passenger ship shall not, nor shall a pilgrim ship, depart or proceed from or discharge native passengers or pilgrims, as the case may be, at any port or place within British India other than a port or place appointed in this behalf by the Local Government for native passenger ships or pilgrim ships, as the case may be.

(2) After a ship has departed or proceeded on a voyage from a port or place so appointed, a person shall not be received on board as a native passenger or pilgrim, as the case may be, except at some other port or place so appointed.

151. (1) The master, owner or agent of a native passenger or pilgrim ship so departing or proceeding shall give notice to an officer, appointed in this behalf by the Local Government, that the ship is to carry native passengers or pilgrims and of her destination and of the proposed time of sailing.

(2) The notice shall be given—

(a) in the case of a native passenger ship not less than twenty-four hours before that time ;

(b) in the case of a pilgrim ship at the original port of departure if in British India, and in other cases at the first port at which she touches in British India, not less than three days, and at all other ports not less than twenty-four hours before that time.

152. After receiving the notice, the officer or a person authorized by him shall be at liberty at all times to enter on the ship and inspect her and her fittings and the provisions and stores on board.

153. (1) A ship intended to carry native passengers or pilgrims shall not commence a voyage from a port or place appointed under this Part, unless the master holds two certificates to the effect mentioned in the two next following sections.

Ship not to sail without two certificates.

(2) The officer whose duty it is to grant a port-clearance for the ship shall not grant it unless the master holds those certificates.

154. The first of the certificates (hereinafter called "certificate A") shall state that the ship is seaworthy and properly equipped, fitted and ventilated, and—

(a) in the case of a native passenger ship, the number of passengers which she is capable of carrying ;

(b) in the case of a pilgrim ship, the number of pilgrims of each class which she is capable of carrying.

155. The second of the certificates (hereinafter called "certificate B") shall state—

Contents of certificate B.

(a) the voyage which the ship is to make, and the intermediate ports (if any) at which she is to touch ;

(b) that she has the proper complement of officers and seamen ;

(c) that food, fuel and pure water over and above what is necessary for the crew, and the other things (if any), prescribed for native passengers or pilgrim ships, as the case may be, have been placed on board, of the quality prescribed properly packed, and sufficient to supply the native passengers or pilgrims on board during the voyage which the ship is to make (including such detention in quarantine as may be probable) according to the prescribed scale ;

(d) that the master holds certificate A ;

(e) in the case of a native passenger ship if the ship is to make a short voyage, as hereinafter defined, in a season of foul weather and to carry upperdeck passengers, that she is furnished with substantial bulwarks and a double awning or with other sufficient protection against the weather ;

(f) in the case of a native passenger ship, if she is to carry passengers to any port in the Red Sea, that she is propelled principally by steam, and, if she is to carry more than one hundred passengers to any such port, that she has on board a medical officer licensed in the prescribed manner ;

(g) in the case of a pilgrim ship, that she is propelled principally by steam and that she is of the tonnage and steam power (if any) prescribed ;

(h) in the case of a pilgrim ship, if she is to carry more than one hundred pilgrims, that she has on board the medical officer or officers required by this Part and the prescribed attendants ; and

(i) such other particulars, if any, as may be prescribed for native passenger or pilgrim ship, as the case may be.

156. If an officer appointed in this behalf by the Local Government is satisfied that a native passenger or pilgrim has brought on board a native passenger or pilgrim ship for his own use food of the quality and in the quantity prescribed, the requirements of this Part, respecting the supply of food for passengers or pilgrims, shall not apply so far as regards the supply of food for that passenger or pilgrim.

157. The person by whom certificate A and certificate B are to be granted shall be the officer appointed under section 151 who is hereinafter referred to as the certifying officer.

158. Where the master of a ship produces to the certifying officer one of the certificates of survey referred to in sections 136 and 144 in respect of the ship in force and applicable to the voyage on which the ship is to proceed or the service on which she is about to be employed, the certifying officer may, if the particulars required by section 154 are certified thereby, take the certificate as evidence of those particulars, and it shall then be deemed to be a certificate A for the purposes of this Part.

159. (1) After receiving the notice required by section 151 the certifying officer may, if he thinks fit, cause the ship to be surveyed at the expense of the master or owner by competent surveyors, who shall report to him whether the ship is, in their opinion, seaworthy and properly equipped, fitted and ventilated for the service on which she is to be employed :

Provided that he shall not cause a ship holding one of the certificates of survey referred to in Part III to be surveyed unless, by reason of the ship having met with damage or having undergone alterations, or on other reasonable ground, he considers it likely that she may be found unseaworthy or not properly equipped, fitted or ventilated for the service on which she is to be employed.

(2) If the officer causes a survey to be made of a ship holding any such certificate, and the surveyors report that the ship is seaworthy and properly equipped, fitted and ventilated for the voyage, and that there was no reasonable ground why the officer should have thought it likely that she would be found unseaworthy, or not properly equipped, fitted or ventilated for the service on which she is to be employed, the expense of the survey shall be paid by the Local Government.

160. (1) The certifying officer shall not grant a certificate unless he is satisfied that the ship has not on board any cargo likely from its quality, quantity or mode of stowage to prejudice the health or safety of the native passengers or pilgrims.

(2) Save as aforesaid, and subject to the provisions of sub-section (3), it shall be in the discretion of the certifying officer to grant or withhold the certificate.

(3) In the exercise of that discretion that officer shall be subject to the control of the Local Government and of any intermediate authority which that Government appoints in this behalf.

161. The master or owner shall post up in a conspicuous part of the ship, so as to be visible to persons on board thereof, a copy of each of the certificates granted under this Part in respect of the ship, and shall keep those copies so posted up throughout the voyage.

Copy of certificates to be exhibited.

162. (1) If a native passenger or pilgrim ship departs or proceeds on a voyage from, or discharges native passengers or pilgrims at, any port or place within British India in contravention of the provisions of this Part, or if a person is received as a native passenger or pilgrim on board any such ship in contravention of the provisions of this Part, the master or owner shall, for every native passenger or pilgrim carried in the ship, or for every native passenger or pilgrim so discharged or received on board, be liable to a fine which may extend to one hundred rupees or to imprisonment for a term which may extend to one month, or to both :

Penalty for a ship unlawfully departing or receiving passengers on board.

Provided that the aggregate term of imprisonment awarded under this section shall not exceed one year.

(2) The ship, if found within two years in any port or place within British India, may be seized and detained by a Chief Customs-officer until the penalties incurred under this Part by her master or owner have been adjudicated and the payment of the fines imposed on him under this Part with all costs has been enforced, under the provisions of this Part.

163. If a person impedes or refuses to allow any entry or inspection authorised by or under this Part, he shall be liable to a fine which may extend to five hundred rupees for each offence, or to imprisonment for a term which may extend to three months or to both.

Penalty for opposing entry on or inspection of ships.

164. If the master or owner of a native passenger or pilgrim ship without reasonable excuse, the burden of proving which shall lie upon him, fails to comply with the requirements of this Part with respect to the posting of copies of certificates, he shall be liable to a fine which may extend to two hundred rupees or to imprisonment for a term which may extend to one month, or to both.

Penalty for not exhibiting copy of certificates.

165. If the master of a native passenger or pilgrim ship after having obtained any of the certificates mentioned in this Part fraudulently does or suffers to be done anything whereby the certificate becomes inapplicable to the altered state of the ship, her native passengers or pilgrims, as the case may be, or other matters to which the certificate relates, he shall be liable to a fine which may extend to two thousand rupees or to imprisonment for a term which may extend to six months, or to both.

Penalty for fraudulent alteration in ship after certificate obtained.

166. If the master of a native passenger or pilgrim ship without reasonable excuse, the burden of proving which shall lie upon him, omits to supply to any passenger or pilgrim the prescribed allowance of food, fuel and water, as required by the provisions of this Part, he shall be liable to a fine which may extend to

Penalty for failing to supply native passengers or pilgrims with prescribed provisions.

twenty rupees for every native passenger or pilgrim who has sustained detriment by the omission.

167. (1) If a native passenger or pilgrim ship has on board a number of native passengers or pilgrims which is greater than the number allowed for the ship by or under this Part, the master and owner shall, for every such passenger or pilgrim over and above that number, be each liable to a fine which may extend to twenty rupees, and the master shall further be liable to imprisonment for a term which may extend to one week in respect of each such passenger or pilgrim:

Penalty for having excessive number of passengers on board.

Provided that the aggregate term of imprisonment awarded under this section shall not exceed six months.

(2) Any officer authorised in this behalf by the Local Government may cause all native passengers or pilgrims over and above the number allowed by or under this Part to disembark, and may forward them to any port at which they may have contracted to land, and recover the cost of so forwarding them from the master or owner of the ship as if the cost were a fine imposed under this Part, and a certificate under the hand of that officer shall be conclusive proof of the amount of the cost aforesaid.

168. If the master of a native passenger or pilgrim ship lands any native passenger or pilgrim at any port or place other than the port or place at which the native passenger or pilgrim may have contracted to land, unless with his previous consent, or unless the landing is made necessary by perils of the sea or other unavoidable accident, the master shall, for every such offence, be liable to a fine which may extend to two hundred rupees, or to imprisonment, for a term which may extend to one month, or to both.

Penalty for landing native passenger or pilgrim at a place other than that at which he has contracted to land.

169. If a native passenger or pilgrim ship, otherwise than by reason of perils of the sea or other unavoidable accident, touches at any port or place in contravention of any express or implied contract or engagement with the native passengers or pilgrims with respect to the voyage which the ship was to make and the time which that voyage was to occupy, whether the contract or engagement was made by public advertisement or otherwise, the master and owner shall each be liable to a fine which may extend to five hundred rupees, or to imprisonment for a term which may extend to three months, or to both.

Penalty for making voyage in contravention of contract.

170. (1) The Chief Customs-officer, or other officer, if any, appointed by the Local Government in this behalf, at any port or place within British India at which a native passenger or pilgrim ship touches or arrives, shall, with advertence to the provisions of this Part send any particulars which he may deem important respecting the native passenger or pilgrim ship, and the native passengers or pilgrims carried therein, to the officer at the port or place from which the ship commenced her voyage, and to the officer at any other port or place within

Information to be sent to ports of embarkation and discharge.

British India where the native passengers or pilgrims or any of them embarked or are to be discharged.

(2) The Chief Customs-officer, or other officer, if any, appointed by the Local Government in this behalf, at any port or place in British India at which a ship to which this Part applies touches or arrives, may enter on the ship and inspect her in order to ascertain whether the provisions of this Act as to the number of native passengers or pilgrims and other matters have been complied with.

171. In any proceeding for the adjudication of any penalty incurred under this Part any document purporting to be a report of such particulars as are referred to in sub-section (1) of the last foregoing section, or a copy of the proceedings of any Court of Justice duly authenticated, and also any like document purporting to be made and signed by any person lawfully exercising consular authority on behalf of His Majesty in any foreign port, shall be received in evidence if it appears to have been officially transmitted to any officer at or near the place where the proceeding under this Part is held.

172. The penalties to which masters and owners of native passenger and pilgrim ships are made liable by this Part shall be enforced only on information laid at the instance of a certifying officer, or at any port or place where there is no such officer, at the instance of the Chief Customs-officer.

173. The Local Government shall appoint such persons as it thinks fit to exercise and perform the powers and duties which are conferred and imposed by this Part or may be conferred and imposed thereunder.

Special Provisions relating to Native Passenger Ships.

174. (1) "Long voyage" means, subject to the provisions of this Part relating to native passenger ships, any voyage during which the ship performing it will in ordinary circumstances be one hundred and twenty hours or upwards continuously out of port.

(2) "Short voyage" means, subject to the provisions of this Part relating to native passenger ships, any voyage during which the ship performing it will not in ordinary circumstances be one hundred and twenty hours continuously out of port.

175. The Governor-General in Council may declare, by notification in the Gazette of India, what shall be deemed to be, for the purposes of this Part relating to native passenger-ships, "seasons of fair weather" and "seasons of foul weather", and, for sailing-ships and steam-ships, respectively, a "long voyage" and a "short voyage."

176. (1) For seasons of fair weather, a native passenger ship performing a short voyage shall, subject to the provisions of this Part, contain in the between decks at least six superficial feet and thirty-six cubic feet of space available for every between-decks passenger, and on the upper-deck at least

four superficial feet available for each such passenger and six superficial feet available for each upper-deck passenger.

(2) For seasons of foul weather, a native passenger ship propelled by sails and performing a short voyage shall, subject as aforesaid, contain in the between-decks at least twelve superficial feet and seventy-two cubic feet of space available for every between-decks passenger, and on the upper-deck at least four superficial feet available for each such passenger and twelve superficial feet available for each upper-deck passenger.

(3) For seasons of foul weather, a native passenger ship propelled by steam, or partly by steam and partly by sails, and performing a short voyage shall, subject as aforesaid, contain in the between-decks at least nine superficial feet and fifty-four cubic feet of space available for every between-decks passenger and on the upper-deck at least four superficial feet available for each such passenger and nine superficial feet available for each upper-deck passenger.

(4) In seasons of foul weather a native passenger ship shall not carry upper-deck passengers unless she is furnished with substantial bulwarks and a double awning or with other sufficient protection against the weather.

177. If a native passenger ship performing a short voyage takes additional native passengers on board at an intermediate port or place, the master shall obtain from the certifying officer at that port or place a supplementary certificate stating—

Ship taking additional passengers at intermediate place.

(a) the number of native passengers so taken on board, and

(b) that food, fuel, and pure water over and above what is necessary for the crew, and the other things, if any, prescribed for the ship, have been placed on board, of the quality prescribed, properly packed and sufficient to supply the native passengers on board during the voyage which the ship is to make (including such detention in quarantine as may be probable) according to the scale for the time being prescribed :

Provided that, if the certificate B held by the master of the ship states that food, fuel and pure water over and above what is necessary for the crew, and the other things, if any, prescribed for her, have been placed on board, of the quality prescribed by the rules, properly packed and sufficient to supply the full number of native passengers which she is capable of carrying, the master shall not be bound to obtain any such supplementary certificate.

178. When the ship after performing a short voyage reaches her final port or place of arrival, the master shall notify to such officer as the Local Government appoints in this behalf the date and supposed cause of death of every passenger dying on the voyage.

Deaths on voyage.

179. (1) A native passenger ship propelled by sails and performing a long voyage shall, subject to the provisions of this Act, contain in the between-decks at least twelve superficial feet and seventy-two cubic feet of space available for every passenger.

Space to be available for passengers.

(2) A native passenger ship propelled by steam, or partly by steam and partly by sails, and performing a long voyage, shall, subject as aforesaid, contain in the between-decks at least nine superficial feet and fifty-four cubic feet of space available for every passenger.

180. The master of a native passenger ship departing or proceeding on a long voyage from any port or place in British India shall sign two statements, specifying the number and the respective sexes of all the native passengers, and the number of the crew, and shall deliver them to the certifying officer, who shall thereupon, after having first satisfied himself that the numbers are correct, countersign and return to the master one of the statements.

181. The master of any such ship shall note in writing on the statement returned to him, and on any additional statement to be made under the next following section, the date and supposed cause of death of any native passenger who may die on the voyage, and shall, when the ship arrives at her port or place of destination or at any port or place where it may be intended to land native passengers, and before any passenger leaves the ship, produce the statement with any additions made thereto to a person lawfully exercising consular authority on behalf of His Majesty at the port or place, or to the Chief Customs-officer thereat or the certifying officer, if any, appointed there.

Ship taking additional passengers at intermediate place.

182. (1) In either of the following cases, namely :—

(a) if after the ship has departed or proceeded on a long voyage any additional native passengers are taken on board at a port or place within British India appointed under this Part for the embarkation of native passengers, or

(b) if the ship upon her voyage touches or arrives at any such port or place, having previously received on board additional native passengers at any place beyond British India,

the master shall obtain a fresh certificate to the effect of certificate B from the certifying officer at that port or place, and shall make additional statements specifying the number and the respective sexes of all the additional passengers.

(2) All the foregoing provisions of this Part with respect to certificate B and statements concerning native passengers shall be applicable to any certificate granted or statement made under this section.

Certain ships to be propelled by steam.

183. (1) A ship carrying native passengers from or to any port in British India to or from any port in the Red Sea shall be propelled principally by steam.

(2) If this section is not complied with, the master and owner shall each be liable to a fine which may extend to five hundred rupees, or to imprisonment which may extend to three months, or to both.

184. (1) A ship carrying more than one hundred native passengers from or to any port in British India to or from any port in the Red Sea shall have on board a medical officer licensed in the prescribed manner.

Certain ships to carry medical officer.

(2) If this section is not complied with, the master shall be liable to a fine which may extend to five hundred rupees, or to imprisonment for a term which may extend to three months, or to both.

185. (1) A ship carrying native passengers from or to any port in British India other than Aden to or from any port in the Red Sea shall touch at Aden, and shall not leave that port without having obtained from the proper authority a clean bill of health.

Ships carrying passengers to or from port in Red Sea to touch at Aden.

(2) If the master without reasonable excuse, the burden of proving which shall lie upon him, fails to touch at Aden or leaves that port without having obtained a bill of health under this section, he shall, for every such offence, be liable to a fine which may extend to two thousand rupees, or to imprisonment for a term which may extend to six months, or to both.

(3) If, in the case of any such ship as is referred to in this section, the master or the medical officer, if any, of the ship without reasonable excuse, the burden of proving which shall lie upon him, breaks, or omits or neglects to obey, any rule under this Part applicable to the ship, he shall be liable to a fine which may extend to five hundred rupees, or to imprisonment for a term which may extend to three months, or to both.

186. The authority at Aden empowered to grant the bill of health shall refuse to grant it if the ship has on board a greater number of native passengers than the number allowed for the ship by or under this Part, and may refuse to grant it if the requirements of any rule under this Part are not complied with on board the ship.

Bill of health at Aden.

187. In the case of a ship carrying native passengers from any port in British India other than Aden to any port in the Red Sea, the officer whose duty it is to grant a port clearance for the ship shall not grant the clearance unless and until the master, owner or agent of the ship and two sureties resident in British India have executed in favour of the Secretary of State for India in Council a joint and several bond, for the sum of five thousand rupees, conditioned—

Bond where ship clears for port in Red Sea.

(a) that the ship shall touch at Aden on the outward voyage and there obtain a clean bill of health, and shall do the same on the homeward voyage if the ship continues to carry more than sixty native passengers, and

(b) that the master and medical officer (if any) of the ship shall on the outward voyage, and also on the homeward voyage if the ship continues to carry more than sixty native passengers, comply with the provisions of this Part and of such rules relating to ships carrying native passengers between ports in British India and ports in the Red Sea as the Governor-General in Council may make under this Part.

188. (1) The Local Government may direct that no native passenger shall be received on board any ship, or any ship of a specified class, carrying native passengers from any port in British India to any port in the Red Sea, unless and until the passenger has been inspected, at such time and place, and in such manner, as the Local Government may fix in this behalf, by a medical officer to be appointed by that Government for the purpose.

(2) If, in the opinion of the officer making an inspection under this section, a native passenger is suffering from any dangerously infectious or contagious disease, the passenger shall not be permitted to embark.

(3) If the master of any such ship knowingly receives on board the ship any person in contravention of this section, he shall be liable to a fine which may extend to five hundred rupees for each person so received, or to imprisonment which may extend to three months or to both.

189. If a master fails to comply with any of the requirements of section 180 or section 181 as to the statements concerning native passengers, or wilfully makes any false entry or note in or on any such statement, or without reasonable excuse, the burden of proving which shall lie upon him, fails to obtain any such supplementary certificate as is mentioned in section 177 or to report deaths as required by section 178 or to obtain any such fresh certificate, or to make any such statement of the number of additional native passengers, as is mentioned in section 182, he shall be liable to a fine which may extend to five hundred rupees for every such offence, or to imprisonment for a term which may extend to three months, or to both.

190. If a ship carrying native passengers from any port or place beyond British India to any port or place in British India has on board a number of passengers greater either than the number allowed for the ship by or under this Part or than the number allowed by the license or certificate, if any, granted in respect of the ship at her port or place of departure, the master and owner shall, for every native passenger in excess of that number, be each liable to a fine which may extend to twenty rupees.

191. (1) The Governor-General in Council may make rules consistent with this Part to regulate, in the case of any native passenger ship or class of such ships, all or any of the following matters, namely:—

(a) the scale on which food, fuel and water are to be supplied to the passengers or to any class or classes of passengers, and the quality of the food, fuel and water ;

(b) the medical stores and other appliances and fittings to be provided on board for maintaining health, cleanliness and decency ;

(c) the licensing and appointment of medical officers in cases where they are required by this Part to be carried ;

(d) the boats, anchors and cables to be provided on board ;

- (e) the instruments for purposes of navigation to be supplied ;
- (f) the apparatus for the purpose of extinguishing fires on board and the precautions to be taken to prevent such fires ;
- (g) the provision of appliances for saving life and of means for making signals of distress, and the supply of lights inextinguishable in water and fitted for attachment to life-buoys ;
- (h) the functions of the master, medical officer (if any) and other officers of the ship during the voyage ;
- (i) the access of between-decks passengers to the upper-deck ; and
- (j) generally, to carry out the purposes of this Part.

(2) The Local Government may make rules consistent with this Part to regulate, in the case of any native passenger ship or class of such ships,—

(a) the local limits within which, and the time and mode at and in which, passengers are to be embarked or discharged at any port or place appointed under this Part in that behalf ; and

(b) the time within which the ship or any ship of the class is to depart or proceed on her voyage after commencing to take passengers on board.

(3) In making a rule under this section the authority making it may direct that a breach of it shall be punishable with fine which may extend to two hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to twenty rupees for every day after the first during which the breach continues.

(4) The power to make rules under this section is subject to the condition of the rules being made after previous publication.

192. The Governor-General in Council may by order prescribe, in the case of any native passenger ship or class of such ships and for all or any voyages, the number of superficial or of cubic feet of space to be available for native passengers ; and the order shall be alternative to, or override, as the Governor General in Council may direct, the requirements on that subject of this Part so far as they apply to that ship or class of ships.

Power to prescribe space to be available for passengers.

Special Provisions regarding Pilgrim Ships.

193. (1) The Governor-General in Council may by order determine the number of superficial and cubic feet of space (not being less than the space for the time being required for passengers under this Act) to be available in the between-decks for pilgrims of each class respectively on board pilgrim ships.

Space to be provided for pilgrims.

(2) Every pilgrim ship shall have reserved for the use of the pilgrims on board gratuitously by day and by night so much of the upper deck as is not required for the airing space of the crew or for permanent structures :

Provided that the upper-deck space available for pilgrims shall in no case be less than six superficial feet for each pilgrim of the age of twelve years or upwards on board.

(3) Subject as aforesaid and to any rules which may be made under this Act, such space may be allotted among the different classes of pilgrims in such proportion as may be thought fit:

Provided that not less space shall be allotted to any one class than will provide six superficial feet of space available for each pilgrim of the age of twelve years or upwards of that class on board.

Disposal of pilgrims' baggage.

194. The baggage of all pilgrims shall be disposed of on board in such manner as may be prescribed.

195. There shall be a regularly appointed hospital on board every pilgrim ship offering such conditions of security, health and space, and capable of accommodating such number, not exceeding five per cent of the pilgrims embarked, as may be prescribed.

Hospital accommodation.

196. The master of every pilgrim ship departing or proceeding from any port or place in British India shall sign a statement in duplicate in the prescribed form specifying the total number and the number of each sex of all the pilgrims embarked and the number of the crew, and such other particulars as may be prescribed, and shall deliver both copies to the certifying officer who shall thereupon after having first satisfied himself that the entries are correct, countersign and return to the master one of the copies.

Statement concerning pilgrims to be delivered before ship departs.

197. The master of every pilgrim ship shall note in writing on the copy of the statement returned to him under the last foregoing section, and on any additional statement to be made under the next following section, the date and supposed cause of death of any pilgrim who may die on the voyage, and shall, when the pilgrim ship arrives at her port or place of destination, or at any port or place at which it may be intended to land pilgrims, and before any pilgrims disembark, produce the statement, with any additions thereto made, to a person lawfully exercising consular authority on behalf of His Majesty at the port or place or to the Chief Customs-officer thereat or the certifying officer (if any) appointed there.

Pilgrim ship taking additional pilgrims at intermediate place.

198. (1) In either of the following cases namely:—

(a) if, after a pilgrim ship has departed or proceeded on her voyage, any additional pilgrims are taken on board at a port or place within British India appointed under this Act for the embarkation of pilgrims, or

(b) if a pilgrim ship upon her voyage touches or arrives at any such port or place, having previously received on board additional pilgrims at any place beyond British India,

the master shall obtain a fresh certificate to the effect of certificate B from the certifying officer at that port or place, and shall furnish an additional statement, in duplicate in the prescribed form, respecting such additional pilgrims.

(2) All the foregoing provisions of this Part with respect to certificate B, and the statement concerning pilgrims to be signed and delivered by the masters of pilgrim ships, shall be applicable to any certificate granted or statement furnished under this section.

199. The master of every pilgrim ship arriving at any port or place in British India at which it may be intended to discharge pilgrims shall, before any pilgrims disembark, deliver a statement signed by him, specifying the total number and the number of each sex of all the pilgrims on board and the number of the crew, and such other particulars as may be prescribed, to the certifying officer appointed thereat.

Statement concerning pilgrims to be delivered before pilgrims disembark in British India.

Pilgrim ships to be propelled principally by steam and to be of certain tonnage and steam-power.

200. (1) Every pilgrim ship shall be propelled principally by steam, and shall be of the tonnage and steam-power (if any) prescribed.

(2) If this section is not complied with, the master and owner shall each be liable to a fine which may extend to five hundred rupees, or to imprisonment which may extend to three months, or to both.

Certain pilgrim ships to carry medical officers and attendants.

ants as may be prescribed.

201. (1) Every pilgrim ship carrying more than one hundred pilgrims shall have on board a medical officer licensed as prescribed and, if the number carried exceed one thousand, a second medical officer similarly licensed, and also in all cases such attendants as may be prescribed.

(2) If this section is not complied with, the master shall be liable to a fine which may extend to five hundred rupees, or to imprisonment which may extend to three months, or to both.

Medical officers' diaries and reports.

202. The medical officer or officers of every pilgrim ship shall keep such diaries, and shall submit such reports or other returns, as may be prescribed.

203. (1) Every pilgrim ship, proceeding from any port in British India other than Aden to any port in the Red Sea, shall touch at Aden, and shall not leave that port without having obtained from the proper authority a certificate stating whether any case of cholera has or has not occurred on board since the ship left the port of last departure.

Pilgrim ships to touch at Aden on the outward voyage.

(2) If the master of any such ship, without reasonable excuse the burden of proving which shall lie upon him, fails to touch at Aden or leaves that port without having obtained the certificate required by this section, he shall for every such offence be liable to a fine which may extend to two thousand rupees, or to imprisonment for a term which may extend to six months, or to both.

204. The authority at Aden empowered to grant the certificate required under section 203 may refuse to permit the ship to leave that port if the provisions of this Part or any rule thereunder are not complied with on board such ship.

When authority at Aden may refuse to let ship leave.

205. In the case of every pilgrim ship proceeding from any port in

Bond where pilgrim ship proceeds on outward voyage.

British India to any port in the Red Sea, the officer whose duty it is to grant a port-clearance shall not grant the clearance unless or until the master, owner or agent and two sureties resident in British India have executed, in favour of the Secretary of State for India in Council, a joint and several bond, for the sum of five thousand rupees, conditioned—

(a) that the ship (if the voyage do not commence at Aden) shall touch at Aden on the outward voyage and there obtain the certificate required by section 203, and

(b) that the master and medical officer or officers (if any) shall comply with the provisions of this Part and the rules thereunder.

206. (1) No pilgrim shall be received on board any pilgrim ship

Medical inspection and permission required before embarkation of pilgrims.

at any port or place in British India unless and until he has been medically inspected, at such time and place, and in such manner, as the Local Government may fix in this behalf nor until the certifying officer has given permission for the embarkation of pilgrims to commence.

(2) If, in the opinion of the officer making an inspection under this section, any pilgrim is suffering from cholera or choleraic indisposition, or any dangerously infectious or contagious disease, or shows any signs of the same or any other suspicious symptoms, such pilgrim shall not be permitted to embark.

(3) All articles which have been contaminated by persons suffering from cholera or choleraic indisposition, or any dangerously infectious or contagious disease, or are suspected of having been so contaminated shall, before being taken on board a pilgrim ship, be disinfected, under the supervision of a medical officer appointed by the Local Government for the purpose, in such manner as may be prescribed.

(4) If the master of any such ship knowingly receives on board any pilgrim or contaminated article in contravention of this section, he shall be liable to a fine which may extend to five hundred rupees for each pilgrim or fifty rupees for each article so received, or to imprisonment which may extend to three months, or to both.

207. (1) If in any case a pilgrim ship does not proceed on her voyage within forty-eight hours after all the pilgrims

Medical inspection after embarkation in certain cases.

have been received on board, and there is reason to suspect that any person on board is suffering from cholera or choleraic indisposition or any dangerously infectious or contagious disease, a medical inspection

of all persons on board may be held in such manner as the Local Government may direct.

(2) If on such inspection any person is found to be suffering from cholera or choleraic indisposition or any dangerously infectious or contagious disease, or shows any signs of the same or any other suspicious symptoms, he shall, together with all articles belonging to him, be at once removed from the ship.

(3) If the master of any such ship knowingly keeps on board any pilgrim or article ordered to be removed under this section, he shall be liable to a fine which may extend to five hundred rupees for each pilgrim, or to fifty rupees for each article, so kept on board or to imprisonment which may extend to three months, or to both.

208. So far as may be practicable, and subject to any rules which may be made under this Act, the medical inspection of female pilgrims shall be carried out by women.

209. (1) Every pilgrim shall be entitled, on payment of his passage-money and fulfilment of the other prescribed conditions (if any), to receive a ticket in the prescribed form, and shall be bound to produce the same to such officers and on such occasions as may be prescribed, and otherwise to deal with the same in the prescribed manner.

(2) Every pilgrim prevented from embarking under section 206 or removed from the ship under section 207, or otherwise prevented from proceeding shall be entitled to the refund of any passage money he may have paid, subject to any conditions or deductions which may be prescribed.

210. The master of every pilgrim ship shall be bound to pay the whole amount of the sanitary taxes imposed by lawful authority at the ports visited if and so far as such taxes are included in the cost of the tickets issued to the pilgrims.

211. If the master of a pilgrim ship fails to comply with any of the requirements of section 196, section 197 or section 199 as to the statements concerning pilgrims, or wilfully makes any false entry or note in or on any such statement or fails to obtain any such fresh certificate or to make any such statement of the number of additional pilgrims as is mentioned in section 198, he shall be liable to a fine which may extend to five hundred rupees for every such offence, or to imprisonment for a term which may extend to three months, or to both.

212. If the master or the medical officer (if any) of a pilgrim ship, without reasonable excuse, the burden of proving which shall lie upon him, breaks, or omits or neglects to obey, any rule under this Part, he shall be liable to a fine which may extend to five hundred rupees, or to imprisonment for a term which may extend to three months, or to both.

Power for Governor-General in Council and Local Government to make rules.

213. (1) The Governor-General in Council may make rules to regulate all or any of the following matters, namely :—

(a) the boats, anchors and cables to be provided on board pilgrim ships ;

- (b) the instruments for purposes of navigation to be supplied ;
- (c) the apparatus for the purpose of extinguishing fires on board and the precautions to be taken to prevent and deal with such fires ;
- (d) the provision of appliances for saving life and of means for making signals of distress, and the supply of lights inextinguishable in water and fitted for attachment to life-buoys ;
- (e) the fittings and other appliances to be provided in the upper and between-decks for the comfort and convenience of pilgrims ;
- (f) the scale on which, and manner in which, food, fuel and water are to be supplied to pilgrims, and the quality of such food, fuel and water ;
- (g) the quality, quantity and storage of the cargo to be carried ;
- (h) the allotment of the upper-deck space between the various classes of pilgrims ;
- (i) the amount and distribution of the baggage of pilgrims ;
- (j) the nature and the extent of the hospital accommodation and the medical stores, disinfectants, and other appliances and fittings to be provided on board for maintaining health, cleanliness and decency ;
- (k) the form of the statements to be furnished by the master under sections 196 and 199, and the particulars to be entered therein ;
- (l) the tonnage and steam-power to be required in the case of pilgrim ships, and the voyage to which, and seasons at which, such rules shall respectively apply ;
- (m) the licensing and appointment of medical officers and other attendants in cases where they are required by this Part to be carried, and the diaries, reports and other returns to be kept or submitted by such medical officers ;
- (n) the manner in which contaminated articles shall be disinfected before being taken on board a pilgrim ship ;
- (o) the manner in which, and the persons by whom, the medical inspection of women shall be carried out ;
- (p) the supply of tickets to intending pilgrims, the form of such tickets and the conditions and other matters to be specified thereon, and the amount of the sanitary taxes to be included in the cost thereof ;
- (q) the refund of passage-money to intending pilgrims who may not be permitted to embark, or who having embarked may be removed from the ship under the powers conferred by this Part or who may otherwise for any unavoidable cause be prevented from proceeding in any pilgrim ship ;
- (r) the functions of the master, medical officer or officers (if any) and other officers during the voyage ; and
- (s) generally, to carry out the provisions of this Part relating to pilgrim ships.

(2) The Local Government may make rules consistent with this Act to regulate—

- (a) the local limits within which, and the time and mode at and in which, pilgrims shall be embarked or discharged at any port or place appointed under this Part in that behalf ; and
- (b) the time within which a pilgrim ship shall depart or proceed on her voyage after commencing to take pilgrims on board.

(3) In making a rule under this section, the authority making it may direct that a breach of it shall be punishable with fine which may extend to two hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to twenty rupees for every day after the first during which the breach continues.

(4) The power to make rules under this section is subject to the condition of the rules being made after previous publication.

PART V.

SAFETY.

Prevention of Collisions.

214. (1) The Local Government may appoint persons to inspect, in any port, ships to which the regulations for preventing collisions at sea, issued under the provisions of the Merchant Shipping Acts, or any other similar law for the time being in force, may apply, for the purpose of seeing that such ships are properly provided with lights and with the means of making fog-signals, in pursuance of such regulations or law.

(2) Every person so appointed shall in the port for which he is appointed have, for the purposes of such inspection, the following powers—

(a) he may go on board any ship and may inspect the same or any part thereof, or any of the machinery, equipments and cargo on board thereof, and may require the unloading or removal of any cargo, ballast or tackle, not unnecessarily detaining or delaying her from discharging, unloading or proceeding on any voyage ;

(b) he may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him, may examine such persons, and may, by a like summons, require returns in writing to any inquiries he thinks fit to make ;

(c) he may require and enforce the production of all books, papers or documents which he considers important ; and

(d) he may administer oaths, or may, in lieu of administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

215. If any person so appointed finds that any ship is not so provided, he shall give to the master or owner notice in writing pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same.

Notice of deficiency to be given to master or owner by such inspectors.

216. Every notice so given shall be communicated in such manner as the Local Government may direct to the Customs-collector at any port from which such ship may seek to clear ; and no Customs-collector to whom such communication is made shall grant such ship a port clearance or allow her to proceed to sea without a certificate under the hand of some person appointed as aforesaid, to the effect that the said ship is properly provided with lights and with the means of making fog-signals in pursuance of the said regulations or law.

Ship not to be cleared by Customs-collector till inspector certifies it is properly provided with lights, etc.

Draught of Water and Load-line.

217. (1) Save as otherwise provided in this Act, every ship, British or foreign, while in any port in British India shall be permanently and conspicuously marked outside with lines of not less than twelve inches in length and one inch in breadth painted longitudinally on each side amidships, or as near thereto as practicable, and indicating the position of each deck which is above water.

(2) The upper edge of each of these lines shall be level with the upper side of the deck-plank next the waterway at the place of marking.

(3) The lines shall be white or yellow on a dark ground, or black on a light ground.

(4) In this Part the expression "amidships" means the middle of the length of the loadwater-line as measured from the fore side of the stem to the aft side of the stern-post.

218. (1) Save as otherwise provided in this Act, the master of every ship, British or foreign, while in any port in British India shall, before the time hereinafter mentioned, mark outside upon each of her sides amidships, or as near thereto as practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre.

(2) The centre of the disc shall be placed at such level below the deck-line marked under the provisions of this Part or of the Merchant Shipping Acts as may be approved by the Local Government, and shall indicate the maximum load-line in perfectly smooth salt-water to which it shall be lawful to load the ship.

(3) The position of the disc shall be fixed in accordance with the tables used from time to time by the Board of Trade subject to such allowance as may be necessary in consequence of any difference between the position of the deck-line marked under the provisions of this Part or of the Merchant Shipping Acts, and the position of the line from which free-board is measured under the said tables, and subject also to such modifications, if any, of the tables and the application thereof, as may from time to time, with the previous approval of the Governor-General in Council, be sanctioned by the Local Government.

(4) Any load-line marked under the Merchant Shipping Acts or under any enactment of any British Possession regarding which an Order in Council under section 444 of the Merchant Shipping Act, 1894, exists, and any certificate given in pursuance of these Acts or any such enactment 57 & 58 Vict., in respect of such marking, shall have the same effect as if it had been so marked or given in pursuance of this Part.

219. If any ship, British or foreign, while in any port in British India is so loaded as to submerge in perfectly smooth salt water the centre of disc indicating the load-line, the ship shall be deemed to be an unsafe ship within the meaning of the provisions hereinafter contained in this Part.

Ships with submerged load-lines deemed unsafe.

220. (1) When any British or foreign-going ship proceeds on any voyage from a port in British India for which the owner is required to enter the ship outwards, the disc indicating the load-line shall be marked before entering her, or, if that is not practicable, as soon afterwards as may be.

Time of marking load-line in case of foreign-going vessels.

(2) Every person applying for entry of any such ship outwards shall insert, in the form of application made to the Customs-collector, a statement in writing of the distance in feet and inches between the centre of such disc and the upper edge of each of the lines indicating the position of the ship's decks which is above such centre; and, if default be made in delivering this statement, the Customs-collector may refuse to enter the ship outwards.

(3) The master of every British or foreign-going ship shall enter a copy of this statement in the agreement with the crew before it is signed by any member of the crew, and no shipping-master shall proceed with the engagement of a crew for any such ship until this entry has been made.

(4) The master of every British or foreign-going ship shall enter a copy of this statement in the official log-book (if any).

(5) When a ship has been marked as by this section required, she shall be kept so marked until she next returns to a port of discharge in British India or arrives at a port in the United Kingdom.

VIII of 1878.

221. (1) When a ship which is a coasting vessel within the meaning of the Sea Customs Act, 1878, is required to be marked with the disc indicating the load-line, she shall be so marked before the ship proceeds to sea from any port.

Time for marking load-line in case of coasting vessels.

(2) The master shall also once in every twelve months, immediately before the ship proceeds to sea, send or deliver to the Customs-collector, or other principal officer of Customs, of such port as the Local Government may appoint in this behalf, a statement in writing of the distance in feet and inches between the centre of the disc and the upper edge of each of the lines indicating the position of the ship's decks which is above that centre.

(3) The master, before the ship proceeds to sea after any renewal or alteration of the disc, shall send or deliver to the Customs-collector or other principal officer of Customs aforesaid notice in writing of such renewal or alteration, together with such statement in writing as before mentioned of the distance between the centre of the disc and the upper edge of each of the deck-lines.

(4) If default be made in sending or delivering any notice or statement required by this section to be sent or delivered, the master shall be liable to a fine which may extend to one thousand rupees.

(5) When a ship has been marked as required by this section, she shall be kept so marked until notice has been given of an alteration.

Penalty for offences relating to marking of load-line.

222. (1) If—

(a) any master of a ship neglects to cause his ship to be marked as by this Part required or to keep her so marked, or allows the ship to be so loaded that when in perfectly smooth salt-water the centre of the disc is submerged ; or

(b) any person conceals, removes, alters, defaces or obliterates, or suffers any person under his control to conceal, remove, alter, deface or obliterate, any of the lines or marks prescribed by or under this Part, except in the event of the particulars thereby denoted being lawfully altered, or for the purpose of escaping capture by an enemy ;

he shall be liable in respect of each such offence to a fine which may extend to one thousand rupees.

(2) The master of any ship on which any of the marks or lines prescribed by or under this Part is inaccurately placed so as to be likely to mislead, who does not forthwith cause such inaccuracy to be corrected, shall be liable to a fine which may extend to one thousand rupees.

Power to appoint
officer to certify
position of disc,

223. The Local Government shall appoint—

(a) a surveyor employed by Lloyd's or by any other society, corporation or association for the survey or registry of shipping approved by the Board of Trade under section 443 of the Merchant Shipping Act, 1894, and specially authorised in this behalf by Lloyd's or by such society, corporation or association, as the case may be, or

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Vict., c. 60.

(b) an officer specially selected by the Local Government for the purpose,

to approve and certify on its behalf from time to time the position of any disc indicating the load-line and any alteration thereof, and may, with the previous sanction of the Governor-General in Council, fix the fees to be taken in respect of any such approval or certificate.

Power to make
rules.

224. (1) The Local Government, with the previous sanction of the Governor-General in Council, may make rules—

(a) determining the lines or marks to be used in connection with any such disc as aforesaid, in order to indicate the maximum load-line under different circumstances and at different seasons, and declaring that the provisions of this Part are to have effect as if any such line were drawn through the centre of the disc ;

(b) as to the mode in which the disc and the lines or marks to be used in connection therewith are to be marked or affixed on the ship, whether by painting, cutting or otherwise ;

(c) as to the mode of application for, and form of, certificates under this Chapter ; and

(d) as to the entry of such certificates, and any other prescribed particulars concerning the draught of water and free-board of the ship, in the official log (if any) of the ship, or other publication thereof on board the ship, and as to delivering copies of such entries.

(2) Rules under clause (a) of sub-section (1) may, with respect to any class or classes of ships,—

- (i) declare what shall be deemed to be seasons of fair weather and seasons of foul weather, respectively, for any of the purposes of the rules, and
- (ii) modify the tables referred to in sub-section (3) of section 218.

Grain Cargoes.

225. No cargo of which more than one-third consists of any kind of grain, corn, rice, paddy, pulse, seeds, nuts or nut-kernels (hereinafter referred to as grain-cargo) shall be carried on board any British or foreign ship unless the same be contained in bags, sacks or barrels, or secured from shifting by boards or bulkheads or otherwise.

226. If the owner or master of any ship, or any agent of such owner who is charged with the loading of such ship or the sending her to sea, knowingly allows any grain-cargo or part of a grain-cargo to be shipped therein for carriage contrary to the provisions of the last foregoing section, he shall be liable to a fine which may extend to three thousand rupees.

Savings.

227. Nothing in the provisions of this Part relating to the overloading and improper loading of ships or to the marking of deck and load-lines shall apply to—

- (i) any sailing-ship of less than one hundred and fifty tons employed in plying coastwise between ports situated in India and Ceylon ;
- (ii) any ship of less than one hundred and fifty tons solely employed in fishing ;
- (iii) any pleasure yacht ;
- (iv) any foreign ship not bound to a port in British India for any purpose other than the purpose of embarking or landing passengers or taking in or discharging cargo or taking in bunker coal ;
- (v) any foreign ship which, if in a port of the United Kingdom, would be entitled to the benefit of a direction of His Majesty in Council under section 445 of the Merchant Shipping Act, 1894.

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Vict., c. 60.

228. (1) The Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, exclude from, or bring again within the operation of, all or any of the provisions of this Part relating to the over-loading and improper loading of ships or to the marking of deck and load-lines subject to such modifications thereof (if any) as may be specified in the notification, any native craft not square-rigged.

(2) The Governor-General in Council may, by notification in the Gazette of India, exclude from, or bring again within the operation of, the provisions of this Part relating to the marking of deck and load-lines any steamships of less than one hundred and fifty tons which are

employed in plying coastwise between ports situated in India and Ceylon and do not carry cargo.

Unseaworthy Ships.

229. (1) Every person who sends or attempts to send a British ship to sea, from any port in British India in such an unseaworthy state that the life of any person is likely to be thereby endangered shall, unless he proves that he used all reasonable means to insure her being sent to sea in a seaworthy state or that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be liable to imprisonment for a term which may extend to six months, or to a fine which may extend to one thousand rupees, or to both.

(2) Every master of a British ship who knowingly takes such ship to sea, in such unseaworthy state that the life of any person is likely to be thereby endangered shall, unless he proves that her going to sea in such unseaworthy state was, under the circumstances reasonable and justifiable, be liable to imprisonment for a term which may extend to six months, or to a fine which may extend to one thousand rupees or to both.

(3) For the purpose of giving such proof, every person charged under this section may give evidence in the same manner as any other witness.

(4) No prosecution under this section shall be instituted except by, or with the consent of, the Local Government.

230. A ship is "unseaworthy" within the meaning of this Part when the materials of which she is made, her construction, the qualifications of the master, the number and description of the crew, the weight, description and stowage of the cargo, the tackle, sails, rigging, stores, ballast, and other equipment are not such as to render her in every respect fit for the proposed voyage or service.

231. (1) In every contract of service, express or implied, between the owner of a British ship and the master or any seaman thereof, and in every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any such ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner that such owner and the master, and every agent charged with the loading of such ship or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to secure the seaworthiness of such ship for the voyage at the time when such voyage commences, and to keep her in a seaworthy state for the voyage during the same.

(2) Nothing in this section shall subject such owner to any liability by reason of such ship being sent to sea in an unseaworthy state where, owing to special circumstances, the so sending her to sea is reasonable and justifiable.

Detention of unsafe ships by the Local Government.

232. (1) Where a British ship in any port to which the Local Government may specially extend this section is an unsafe ship, that is to say, is by reason of the defective condition of her hull, equipments or machinery, or by reason of overloading or improper loading, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended, such ship may be provisionally detained for the purpose of being surveyed and either finally detained or released as follows, namely :—

(a) The Local Government, if it has reason to believe, on complaint or otherwise, that any such ship is unsafe, may order the ship to be provisionally detained as an unsafe ship for the purpose of being surveyed.

(b) A written statement of the grounds of such detention shall be forthwith served on the master of such ship.

(c) When the Local Government provisionally orders the detention of a ship, it shall either refer the matter to the Court of Survey for the port where the ship is detained, or forthwith appoint some competent person to survey such ship and report thereon ; and, on receiving his report, may either order the ship to be released or, if in its opinion the ship is unsafe, may order her to be finally detained, either absolutely or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, as the Local Government thinks necessary for the protection of human life.

(d) Before an order for final detention is made, a copy of the report shall be served upon the master of the ship, and within seven days after such service the owner or master may appeal against such report in the manner prescribed, to the Court of Survey for the port where the ship is detained.

(e) Where a ship has been provisionally detained and a person has been appointed under this section to survey such ship, the owner or master of the ship, at any time before such person makes that survey, may require that he shall take with him as assessor such person as the owner or master may select, being a person named in the list of assessors for the Court of Survey or, if there is no such list, or if it is impracticable to procure the attendance of any person named in such list a person of nautical, engineering or other special skill and experience. If the surveyor and assessor agree that the ship should be detained or released, the Local Government shall cause the ship to be detained or released accordingly and the owner or master shall have no appeal. If the surveyor and assessor differ in their report, the Local Government may act as if the requisition had not been made and the owner or master shall have such appeal touching the report of the surveyor as is hereinbefore provided in this section.

(f) Where a ship has been provisionally detained, the Local Government may, at any time if it thinks it expedient, refer the matter to the Court of Survey for the port where the ship is detained.

(g) The Local Government may at any time if satisfied that a ship detained under this section is not unsafe order her to be released either upon or without any conditions.

(2) Any person appointed by the Local Government for the purpose (in this Act referred to as a "detaining-officer") shall have the same power as the Local Government has under this section of provisionally ordering the detention of a ship for the purpose of being surveyed, and of appointing a person to survey her; and if he thinks that a ship so detained by him is not unsafe may order her to be released.

(3) A detaining officer shall forthwith report to the Local Government any order made by him for the detention or release of a ship.

(4) A ship detained under this section shall not be released by reason of her British or British Indian register being subsequently closed.

(5) A detaining officer shall have, for the purpose of his duties under this Part, the following powers, namely:—

(a) He may go on board any British ship and may inspect the same or any part thereof, or any of the machinery, equipments and cargo on board thereof, and may require the unloading or removal of any cargo, ballast or tackle not unnecessarily detaining or delaying her from discharging, unloading or proceeding on any voyage;

(b) he may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him, may examine such persons, and may, by a like summons, require returns in writing to any inquiries he thinks fit to make;

(c) he may require and enforce the production of all books, papers or documents which he considers important; and

(d) he may administer oaths, or may, in lieu of administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

Costs of detention and damages incidental thereto.

233. If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the provisional detention of a ship, the Government shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason

Liability of Government for costs and damages when ship wrongly detained.

of the detention or survey.

234. If a ship is finally detained under this Part, or if it appears that a ship provisionally detained was at the time of such detention unsafe, the owner of the ship shall be liable to pay to Government its costs of and incidental to the detention and survey of the ship; and such costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

Liability of ship-owner for costs when ship rightly detained.

235. For the purposes of this Act, the costs of and incidental to any proceeding before a Court of Survey, and a reasonable amount in respect of the remuneration of the surveyor or any person appointed to represent the Local Government before the Court, shall be deemed to be part of the costs of the detention and survey of the ship.

What included in costs of detention and survey.

236 When a complaint is made to the Local Government or a detaining-officer that a British ship is unsafe, it shall be in the discretion of such Government or officer, as the case may be, to require the complainant to give security to the satisfaction of such Government or officer for the costs and compensation which such complainant may become liable to pay as hereinafter mentioned :

Power to require from complainant security for costs, etc.

Provided that, where the complaint is made by one-fourth, being not less than three, of the seamen belonging to the ship, and is not in the opinion of such Government or officer frivolous or vexatious, such security shall not be required ; and such Government or officer shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps to ascertain whether the ship ought to be detained under this Part.

237. Where a ship is detained in consequence of any complaint, and the circumstances are such that the Government is liable under this Part to pay to the owner of the ship any costs of compensation, the complainant shall be liable to pay to the Government all such costs and compensation as the Government incurs, or is liable to pay, in respect of the detention and survey of the ship.

Costs, etc., payable by Government recoverable from complainant.

238. When a foreign ship is in a port in British India and is, whilst at that port, unsafe by reason of overloading or improper loading, the provision of this Part with respect to the detention of ships shall apply to that foreign ship as if she were a British ship with the following modifications, namely :—

Application to foreign ships of provisions as to detention.

(i) a copy of the order for the provisional detention of the ship shall forthwith be served on the consular officer for the country to which the ship belongs at or nearest to the port in which such ship is detained ;

(ii) the consular officer, at the request of the owner or master of the ship, may require that the person appointed by the Local Government to survey the ship shall be accompanied by such person as the consular officer may select, and in that case, if the surveyor and that person agree, the Local Government shall cause the ship to be detained or released accordingly ; but, if they differ, the Local Government may act as if the requisition had not been made, and the owner and master shall have the like appeal to a Court of Survey touching the report of the surveyor as is hereinbefore provided in the case of a British ship ; and

(iii) where the owner or master of the ship appeals to the Court of Survey, the consular officer, at his request may appoint a competent person to be assessor in the case in lieu of the assessor who, if the ship were a British ship, would be appointed otherwise than by the Local Government.

239. (1) The Local Government may, from time to time, by notification in the local official Gazette, delegate, either absolutely or subject to such conditions or restrictions as it thinks fit, to any body of Commissioners or trustees appointed for managing the affairs of a port, all or any of the powers, and require the said body to discharge all or any

Delegation of powers to Port Commissioners, etc.

of the functions of a Local Government under the foregoing sections of this Part, except the power of making rules.

(2) While any such notification remains in force, all costs and damages which would otherwise be recoverable under this Part by or from the Government, shall be recoverable in like manner by or from such body; and such body shall notwithstanding anything to the contrary contained in any enactment for the time being in force, credit or pay, as the case may be, the amount of any cost or damages so recovered to or from the funds held by them in trust as such body.

Installation of Wireless Telegraphy.

240. The provisions of this Part in regard to the installation of wireless telegraphy on ships registered in British India shall come into force on such date as the Governor-General in Council may, by notification in the Gazette of India, direct.

241. In the provisions of this Part relating to the installation of wireless telegraphy, "passenger steamer" means a steamship which carries more than twelve passengers.

242. (1) Every sea going British ship registered in British India, being a passenger steamer or a ship of sixteen hundred tons gross tonnage or upwards, shall be provided with a wireless telegraph installation of the prescribed description, and shall maintain a wireless telegraph service of the prescribed nature and shall be provided with such certificated operators and watchers as may be prescribed:

Provided that the Governor-General in Council may, by notification in the Gazette of India, exempt from the obligations imposed by this section, any ships or classes of ships if he is of opinion that, having regard to the nature of the voyages on which the ships are engaged, or other circumstances of the case, the provision of a wireless telegraph installation is unnecessary or unreasonable.

(2) If this section is not complied with in the case of any such ship, the master or owner of the ship shall be liable in respect of each offence to a fine which may extend to one thousand rupees.

243. (1) The Governor-General in Council may appoint officers (hereinafter referred to in this Act as wireless telegraphy inspectors) for the purpose of seeing that the requirements of this Part relating to wireless telegraphy are complied with on board any ship.

(2) A wireless telegraphy inspector may inspect any ship for the purpose of seeing that she is properly provided with a wireless telegraph installation and certificated operators and watchers in conformity with this Part, and for this purpose may go on board any ship at all reasonable times and do all things necessary for the proper inspection of the ship for the purpose of the provisions of this Part relating to wireless telegraphy, and may also require the master of the ship to supply him with any information which it is in the power of the master to supply for that purpose, including the production of any certificate granted under this

Part in respect of the installation, and of the certificates of the operators and watchers on the ship.

(3) If a wireless telegraphy inspector finds that a ship is not so provided, he shall give to the master or owner notice in writing pointing out the deficiency, and also pointing out what, in his opinion, is requisite to remedy the same.

(4) Every notice given under sub-section (3) shall be communicated, in the prescribed manner, to the Chief Officer of Customs of any port at which the ship may seek to obtain port-clearance, who shall order that the ship shall be detained until a certificate under the hand of a wireless telegraphy inspector is produced to the effect that the ship is properly provided with a wireless telegraph installation and certified operators and watchers in conformity with this Part.

244. The provisions of this Part relating to wireless telegraphy shall, as from a date three months after the coming into force of those provisions, apply to ships other than British ships registered in British India, while they are within any port in British India in like manner as they apply to British ships registered in British India.

245. (1) The Governor-General in Council may make rules to carry out the purposes of the provisions of this Part relating to wireless telegraphy.

(2) In particular and without prejudice to the generality of the foregoing power such rules may prescribe—

(a) the nature of the wireless telegraph installation to be provided and of the service to be maintained, and the number, grades and qualifications of certified operators and watchers to be carried;

Provided that no ship shall be required to carry more than one operator unless more than one operator would have been required under the provisions of the Merchant Shipping (Convention) Act, 1914 ;

(b) the manner in which a notice given under sub-section (3) of section 243 shall be communicated to the Chief Officer of Customs.

PART VI.

SPECIAL SHIPPING INQUIRIES AND COURTS.

246. (1) For the purpose of inquiries and investigations under this Part a shipping casualty shall be deemed to occur when—

(a) on or near the coasts of British India, any ship is lost, abandoned, stranded or materially damaged ;

(b) any loss of life ensues by reason of any casualty happening to or on board of, any ship on or near those coasts ;

(c) on or near those coasts any ship causes loss or material damage to any other ship ;

(d) in any place any such loss, abandonment, stranding, damage or casualty occurs to, or on board of any British ship, and any competent witness thereof is found at any place in British India; or

(e) any British ship is supposed to have been lost, and any evidence can be obtained in British India as to the circumstances under which she proceeded to sea or was last heard of.

(2) In sub-section (1) the word "coasts" includes the coasts of creeks and tidal rivers.

(3) In the cases mentioned in clauses (a), (b) and (c) of sub-section (1), the master, pilot, harbour-master or other person in charge of the ship, or where two ships are concerned in charge of each ship, at the time of the shipping casualty and

in cases under clause (d) of sub-section (1) where the master of the ship concerned or (except in the case of a loss) where the ship concerned proceeds to any place in British India from the place where the shipping casualty has occurred the master of the ship

shall, on arriving in British India, give immediate notice of the shipping casualty to the nearest Magistrates or when he arrives at a port in British India, to any office appointed by the Local Government in this behalf at the port.

(4) Any person bound to give notice under this section and wilfully failing to give the same shall be liable to a fine which may extend to five hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to three months.

247. (1) Whenever any Magistrate or any officer appointed by the Local Government in this behalf receives credible information that a shipping casualty has occurred he shall forthwith report in writing the information to the Local Government.

Report of shipping casualties to the Local Government

(2) Any such Magistrate or officer—

(i) may go on board any ship, and may inspect the same or any part thereof, or any of the machinery, boats, equipments or articles on board thereof, to which the provisions of this Act apply, not unnecessarily detaining or delaying her from proceeding on any voyage;

(ii) may enter and inspect any premises the entry or inspection of which appears to him to be requisite for the purpose of the report which he is directed to make;

(iii) may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine for such purpose, and may require answers or returns to any inquiries he thinks fit to make;

(iv) may require and enforce the production of all books, papers or documents which he considers important for such purpose; and

(v) may administer oaths or may, in lieu of requiring or administering an oath, require any person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

248. (1) If the Local Government to which the report prescribed by the last foregoing section has been made or within whose territories any competent witnesses of any shipping casualty have arrived or are to be found, or any evidence thereof can be obtained, is of opinion that a formal investigation into the shipping casualty is requisite or expedient, the Local Government may appoint a special Court, consisting of not less than two nor more than four persons, and direct that Court to make the investigation, and may fix the place for making the same.

Power for Local Government to appoint special Court of Investigation.

(2) One of the members of the Court shall be a Magistrate acting in or near the place where the investigation is made; another shall be some person conversant with maritime affairs; and the other or others (if any) shall be conversant with either maritime or mercantile affairs.

249. Every Colonial Court of Admiralty in British India, and the principal Court of ordinary criminal jurisdiction at every port of British India where there is no such Court is hereby authorized, when so directed by the Local Government or by such officer as the Local Government has empowered in this behalf, to make a formal investigation into a shipping casualty.

Power for other Courts to hold investigations into casualties when so directed.

250. (1) Any Court making a formal investigation into a shipping casualty may inquire into any charge of incompetency or misconduct arising, in the course of the investigation, against any master, mate or engineer, as well as into any charge of a wrongful act or default on his part causing the shipping casualty.

Power for Court of Investigation to inquire into charges against masters, mates and engineers.

(2) In every case in which any such charge, whether of incompetency or misconduct, or of a wrongful act or default, as aforesaid, arises against any master, mate or engineer in the course of an investigation, the Court shall, before the commencement of the inquiry, cause to be furnished to him a copy of the report or statement of the case upon which the investigation has been directed.

Power for Local Government to direct investigation into charges of incompetency or misconduct.

251. (1) If the Local Government has reason to believe that there are grounds for charging any master, mate or engineer, with incompetency or misconduct, otherwise than in the course of a formal investigation into a shipping casualty, the Local Government—

(a) if the master, mate or engineer holds a certificate under this Act, in any case,

(b) if the master, mate or engineer holds a certificate under the Merchant Shipping Acts, in the following cases:—

(i) where the incompetency or misconduct has occurred on a British ship on or near the Coasts of British India, or on board a British ship in the course of a voyage to a port within the colony;

(ii) where the incompetency or misconduct has occurred on board a British ship registered in British India;

- (iii) where the master, mate or engineer of a British ship, who is charged with incompetency or misconduct on board that British ship is found in British India ;

may transmit a statement of the case to any Court mentioned in section 249 at or nearest to the place at which it may be convenient for the parties and witnesses to attend, and may direct that Court to make an investigation into that charge.

(2) Before commencing the investigation, the Court shall cause the master, mate or engineer so charged to be furnished with a copy of the statement transmitted by the Local Government.

252. For the purpose of an investigation under this Part into any charge against a master, mate or engineer, the Court

Person accused to be heard. may summon him to appear, and shall give him full opportunity of making a defence either in person or otherwise.

Powers of Courts as to evidence and regulation of proceedings. **253.** For the purpose of any investigation under this Part, the Court making the investigation, so far as relates to compelling the attendance and examination of witnesses and the production of documents and the regulation of the proceedings, shall have—

(a) if the Court is a special Court—the same powers as are exercisable by the principal Court of ordinary criminal jurisdiction for the place at which the investigation is made ;

(b) if the Court is a Court having Admiralty jurisdiction or a principal Court of ordinary criminal jurisdiction—the same powers as are exercisable by that Court in the exercise of its Admiralty or criminal jurisdiction (as the case may be).

254. (1) When any investigation involves, or appears likely to involve, any question as to the cancelling or suspension of the certificate of a master, mate or engineer, the Court making the investigation shall constitute as its assessors for the purpose of the investigation two persons having experience in the merchant service ; and in every other investigation the Court making it may, if it thinks fit, constitute as its assessor for the purposes of the investigation any person conversant with maritime affairs and willing to act as its assessor.

Assessors.

(2) The assessors shall attend during the investigation and deliver their opinions in writing, to be recorded on the proceedings, but the exercise of all powers conferred on the Court by this Part or any other enactment for the time being in force shall rest with the Court.

255. (1) If any Court making an investigation under this Part thinks it necessary for obtaining evidence that any person should be arrested, it may issue a warrant for his arrest, and may, for the purpose of effecting the arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the Local Government) to enter any vessel.

Power to arrest witnesses and cause entry and detention of vessels.

(2) Any officer so authorized may, for the purpose of enforcing the entry, call to his aid any officers of Police or Customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest.

(3) No person shall be detained by virtue of this section for more than forty-eight hours.

256. (1) Whenever, in the course of any such investigation, it appears that any person has committed within the jurisdiction of any Court in British India an offence punishable under any law in force in British India, the Court making the investigation may subject to such rules consistent with this Act as the High Court may from time to time prescribe cause him to be arrested, or commit him or hold him to bail to take his trial before the proper Court, and may bind over any person to give evidence at the trial, and may, for the purposes of this section, exercise all the powers of a Magistrate of the first class or a Presidency Magistrate.

Power to commit for trial and bind over witnesses.

257. (1) The Court shall, in the case of all investigations under this Part, transmit to the Local Government a full report of the conclusions at which it has arrived, together with the evidence.

(2) In cases in which, under the Merchant Shipping Acts, the Court is required to send a report to the Board of Trade, the report shall be sent through the Local Government, and the transmission of the report to the Local Government shall be a sufficient compliance with this section.

Suspension and Cancellation of Certificates and Grant of fresh Certificates.

258. Nothing in this Part shall affect the powers conferred by the Merchant Shipping Acts, on the Courts conducting investigations under this Part, to cancel or suspend certificates granted under any of the said Acts, or the power to remove the master of a ship conferred by section 472 of the

Saving of power to cancel and suspend certificates and remove master under English Acts.

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c. 60.

259. (1) When any such Court cancels or suspends any such certificate the Local Government may, if it thinks fit, and if it is so empowered by any enactment of a British Indian Legislature for the time being in force, grant under that enactment, but without examination, to the holder of the certificate, when the certificate is a certificate as master, a certificate as mate, and, when the certificate is a certificate as a mate, or engineer, a certificate as mate or engineer, as the case may be of a grade lower than that which he held at the time of the cancellation or suspension.

(2) A certificate so granted shall have the same effect as if it had been granted after examination, but shall not have the effect of a certificate granted under the provisions of the Merchant Shipping Acts.

(3) The Local Government may act under this section either in pursuance of a recommendation from the Court or of its own motion.

Power for Local Government to suspend or cancel certificates in certain cases.

260. (1) Any certificate which has been granted by any Local Government to any master, mate or engineer, may be suspended or cancelled, by that or any other Local Government, in the following cases, that is to say :—

(a) if, on any investigation made under the Merchant Shipping Acts, or on any investigation made by any Court or tribunal for the time being authorized by the legislative authority in any British possession to make inquiry into charges of incompetency or misconduct on the part of masters, mates or engineers of ships, or as to shipwrecks or other casualties affecting ships, the Court or tribunal reports that the master, mate or engineer is incompetent or has been guilty of any gross act of misconduct, drunkenness or tyranny, or that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by his wrongful act or default ;

(b) if he is proved to have been convicted of any offence which, if committed in British India, would be non-bailable, or, if committed in England, would be a felony ; and

(c) if (in case of a master) he has been superseded by the order of any Admiralty Court, or of any Naval Court constituted as provided by the Merchant Shipping Act, 1894, or by any other law for the time being in force.

57 & 58 Vict.,
c. 60.

(2) Notwithstanding anything contained in this Act the Local Government may, at any time, without any formal investigation, suspend or cancel any engine driver's certificate granted by it if, in its opinion, the holder is, or has become, unfit to act as an engine driver.

261. If the Local Government which cancels or suspends a certificate

Report to other Local Governments.

of a master, mate or engineer is not the Local Government by or under the authority of which the same was granted, the Local Government so cancelling or suspending the certificate shall report the proceedings, and the fact of cancellation or suspension, to that Local Government.

262. Every Local Government cancelling or suspending under section

Report to Board of Trade.

260 the certificate of a master, mate or engineer shall, as soon as may be practicable, report to the Board of Trade the fact of such cancellation or suspension.

Power to revoke cancellation or suspension and grant new certificate.

263. (1) Any Local Government may at any time revoke any order of cancellation or suspension which it may have made under section 260, or grant, without examination to any person whose certificate it has so cancelled, a new certificate of the same or of any lower grade.

(2) A certificate so granted shall have the same effect as if it had been granted after examination, but shall not have the effect of a certificate granted under the provisions of the Merchant Shipping Acts.

Power of Court of Investigation or Inquiry as to certificates granted by a Local Government.

264. (1) A certificate of a master, mate or engineer which has been granted by a Local Government under this Act may be cancelled or suspended—

(a) by a Court holding a formal investigation into a shipping casualty under this Part if the Court finds that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by the wrongful act or default of such master, mate or engineer ;

(b) by a Court holding an investigation under this Part into the conduct of the master, mate or engineer if the Court finds that he is incompetent or has been guilty of any gross act of drunkenness, tyranny or other misconduct.

(2) At the conclusion of the investigation or as soon afterwards as possible, the Court shall state in open sitting the decision to which it may have come with respect to the cancelment or suspension of any certificate,

(3) Where the Court cancels or suspends a certificate, the Court shall forward it to the Local Government, together with the report which it is required by this Part to transmit to that Government.

(4) A certificate shall not be cancelled or suspended by a Court under this section unless a copy of the report or a statement of the case on which the investigation or inquiry has been ordered has been furnished before the commencement of the investigation or inquiry to the holder of the certificate.

(5) The duties imposed and powers conferred by sections 261, 262 and 263 on the Local Government which cancels or suspends a certificate shall when a Court has under this section cancelled or suspended a certificate, be performed and exercised by the Local Government to which the Court has forwarded the certificate under sub-section (3), as if such Local Government had itself cancelled or suspended the certificate under section 260.

265. (1) The principal Court of ordinary criminal jurisdiction at any port in British India, where there is no Colonial Court of Admiralty, may remove the master of any ship within the jurisdiction of that Court if that removal is shown to the satisfaction of the Court by evidence on oath to be necessary.

Power to remove master and appoint a new master.

(2) The removal may be made upon the application of the owner of any ship or his agent, or of the consignee of the ship, or of any certificated mate, or of one-third or more of the crew of the ship.

(3) The Court may appoint a new master instead of the one removed, but where the owner, agent or consignee of the ship is within the jurisdiction of the Court, such an appointment shall not be made without the consent of that owner, agent or consignee.

(4) The Court may also make such order and require such security in respect of the costs of the matter as the Court thinks fit.

Delivery of certificate cancelled or suspended.

266: (1) A master, mate or engineer whose certificate is cancelled or suspended by any Court or by the Local Government shall deliver his certificate—

(a) if cancelled or suspended by a Court, to that Court ;

(b) if cancelled or suspended by a Local Government, to that Local Government, or to a shipping master or other person appointed in this behalf by that Local Government.

(2) If a master, mate or engineer fails to comply with this section, he shall for each offence be liable to a fine which may extend to five hundred rupees.

Investigations into Explosions.

Power to investigate causes of explosions on board steamships.

267. (1) Whenever any explosion occurs on board any steam-ship on or near the coasts of British India, the Local Government may, if it thinks fit, direct that an investigation into the cause of the explosion be made by such person or persons as it thinks fit.

(2) The person or persons so directed may enter into and on the steam-ship, with all necessary workmen and labourers, and remove any portion of the steam-ship, or of the machinery thereof, for the purpose of the investigation, and shall report to the Local Government, what, in his or their opinion, was the cause of the explosion.

Courts of Survey.

Constitution of Court of Survey.

268. (1) A Court of Survey for a port shall consist of a Judge sitting with two assessors.

(2) The Judge shall be a District Judge, Judge of a Court of Small Causes, Presidency Magistrate, Magistrate of the first class or other fit person appointed in this behalf by the Local Government either generally or for any specified case.

(3) The assessors shall be persons of nautical engineering or other special skill or experience.

(4) Subject to the provisions of Part V as regards foreign ships, one of the assessors shall be appointed by the Local Government either generally or in each case, and the other shall be summoned by the Judge in the manner prescribed, out of a list of persons from time to time prepared for the purpose and published by the Local Government in the local official Gazette or, if there is no such list or if it is impracticable to procure the attendance of any person named in such list, shall be appointed by the Judge.

Powers and procedure of Court of Survey.

269. (1) The Judge shall, on receiving notice of an appeal or a reference from the Local Government, immediately summon the assessors to meet forthwith in the prescribed manner.

(2) The Court of Survey shall hear every case in open Court.

(3) The Judge and each assessor shall for the purposes of this Act, have the same powers of inspection, and of enforcing the attendance of witnesses and the production of evidence, as are by this Act conferred on a detaining-officer.

(4) The Judge may appoint any competent person to survey the ship and report thereon to the Court.

(5) The Judge shall have the same power as the Local Government has to order the ship to be released or finally detained; but, unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

(6) The owner and master of the ship and any person appointed by the owner or master and also any person appointed by the Local Government, may attend at any inspection or survey made in pursuance of this section.

(7) The Judge shall report the proceedings of the Court in each case to the Local Government in the manner prescribed, and each assessor shall either sign such report or report to the Local Government the reasons for his dissent.

Power of Local Government to make rules with respect to Court of Survey.

270. The Local Government may make rules to carry into effect the provisions of this Act with respect to a Court of Survey, and, in particular and without prejudice to the generality of the foregoing power, with respect to—

- (a) the procedure before the Court;
- (b) the requiring, on an appeal of security for costs and damage;
- (c) the amount and application of fees; and
- (d) the ascertainment, in case of dispute, of the proper amount of costs.

Scientific Referees.

271. (1) If the Local Government is of opinion that an appeal to a Court of Survey involves a question of construction or design or of scientific difficulty, or important principle, it may refer the matter to such one or more out of a list of scientific referees to be from time to time prepared by the Local Government, as may appear to possess the special qualifications necessary for the particular case, and may be selected by agreement between the Port-officer and the appellant, or, in default of any such agreement, by the Local Government; and thereupon the appeal shall be determined by the referee or referees instead of by the Court of Survey.

(2) The Local Government, if the appellant in any such appeal so requires and gives security to its satisfaction to pay the costs of and incidental to the reference, shall refer such appeal to a referee or referees selected as aforesaid.

(3) The referee or referees shall have the same powers as a Judge of the Court of Survey.

PART VII.

WRECK AND SALVAGE.

272. In this Part "wreck" includes the following when found in the sea or any tidal water or on the shores thereof:—

- (a) goods which have been cast into the sea and then sink and remain under water;

(b) goods which have been cast or fall into the sea and remain floating on the surface ;

(c) goods which are sunk in the sea, but are attached to a floating object in order that they may be found again ;

(d) goods which are thrown away or abandoned ; and

(e) a ship abandoned without hope or intention of recovery.

273. (1) The Local Government may, by notification in the local official Gazette, appoint such person as it thinks fit to receive and take possession of wreck and to perform such duties connected therewith as are hereinafter mentioned, within such local limits as it may prescribe.

Appointment of receivers.

(2) Persons so appointed shall be called receivers of wreck.

274. (1) Any person finding and taking possession of any wreck within any local limits for which a receiver of wreck has been so appointed, or bringing within such limits any wreck which has been found and taken possession of elsewhere, shall, as soon as practicable,—

Rules to be observed by person finding wreck.

(a) if he be the owner thereof, give the receiver of wreck notice in writing of the finding thereof and of the marks by which such wreck is distinguished ;

(b) if he be not the owner of such wreck, deliver the same to the receiver of wreck.

(2) Any person omitting to give notice of the finding of, or to deliver, any wreck to the receiver of wreck as required by sub-section (1) shall be liable to a fine which may extend to one thousand rupees, and, in the case of omission to deliver any wreck, shall, in addition to such fine, forfeit all claim to salvage, and pay to the owner of such wreck if the same is claimed, or if the same is unclaimed to the Government, a penalty not exceeding twice the value of such wreck.

275. (1) Whenever any wreck is found by the receiver of wreck or has been delivered to him in accordance with the provisions of this Part by any person, not being the owner thereof, the Government or such other person so delivering such wreck as the case may be, shall be entitled to receive a reasonable sum for salvage, having regard to all the circumstances of the case.

Government or person finding wreck entitled to salvage.

(2) Any dispute arising concerning the amount due under this section shall be determined by a Magistrate upon application to him for that purpose by either of the disputing parties.

276. The receiver of wreck shall, on taking possession of any wreck, publish a notification, in such manner and at such place as the Local Government may prescribe in this behalf, containing a description of the same and the time at which and the place where the same was found.

Notice to be given by receiver.

Wreck may in certain cases be sold.

277. If after the publication of such notification the wreck is unclaimed, or if the person claiming the same fails to pay the amount due for salvage

and for charges incurred by the receiver of wreck in respect thereof, the receiver of wreck may sell such wreck by public auction, if of a perishable nature, forthwith, and, if not of a perishable nature, at any period not less than six months after such notification as aforesaid.

278. On the realization of the proceeds of such sale, the amount due for salvage and charges as aforesaid, together with the expenses of the sale shall be deducted therefrom. and the balance shall be paid to the owner of the wreck, or if no such person appear and claim the same, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same :

Provided that he makes his claim within one year from the date of the sale.

Savings.

279. Nothing in this Part shall be deemed to—

(a) affect the declaration of the twenty-third day of October, 1889, in Schedule IV, between the Government of the United Kingdom of Great Britain and Ireland and the Government of the French Republic, with reference to the disposal of the proceeds of wrecks on their respective coasts, that declaration having been made applicable to India, or

XV of 1908.

(b) affect section 29 of the Indian Ports Act, 1908, or entitle any person to salvage in respect of any property recovered by creeping or sweeping in contravention of that section.

PART VIII.

LEGAL PROCEEDINGS.

XLV of 1860. Certain persons to be deemed Public Servants.

280. The following persons shall be deemed to be public servants within the meaning of the Indian Penal Code, namely :—

- (a) Every surveyor appointed under this Act.
- (b) Every judge, assessor or other person acting under Part VI.
- (c) Every person appointed under this Act to report information as to shipping casualties.
- (d) Every person authorised under this Act to make any investigation under Part VI, and all persons whom he calls to his aid.
- (e) Every person directed to make an investigation into an explosion on a steamship under section 267.
- (f) Every Wireless Telegraphy Inspector appointed under this Act.

281. No Magistrate shall try any offence against this Act or any rule made thereunder unless he is a Presidency Magistrate or a Magistrate whose powers are not less than those of Magistrate of the first class.

Jurisdiction of Magistrates.

282. Any person committing any offence against this Act or any rule thereunder, may be tried for the offence in any place in which he may be found or which the Local Government may, by notification in the local official Gazette, direct in this behalf, or in any other place in which he might be tried under any other law for the time being in force.

Place of trial of the offender.

283. (1) Whenever in the course of any legal proceeding under this

Depositions to be received in evidence when witnesses cannot be produced.

Act instituted at any place in British India before any Court or Magistrate, or before any person authorised by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject-matter, and the defendant or the person accused (as the case may be) after being allowed a reasonable opportunity for so doing, does not produce the witness before the Court, Magistrate or person so authorised any deposition previously made by the witness in relation to the same subject-matter before any Court, Justice or Magistrate in His Majesty's dominions (including all parts of British India other than those subject to the same Local Government as the place where the proceeding is instituted), or before any British consular officer, if elsewhere, shall be admissible in evidence—

(a) if the deposition is authenticated by the signature of the presiding officer of the Court or the Justice, Magistrate or consular officer before whom it is made;

(b) if the defendant or the person accused had an opportunity by himself or his agent of cross-examining the witness;

(c) if the proceeding is criminal, on proof that the deposition was made in presence of the person accused.

(2) It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition; and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness, and that the deposition, if made in a criminal proceeding, was made in the presence of the person accused, shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

284. (1) Where under this Act a ship is authorised or ordered to be

Enforcing detention of ship.

detained, any commissioned officer on full pay in the Naval or Military service of His Majesty, any commander or first officer in the Royal Indian Marine Service, or any port officer, harbour master, conservator of a port, or officer of Customs may detain the ship.

(2) If any ship after detention, or after service on the master of any notice of, or order for, such detention, proceeds to sea before she is released by competent authority, the master of the ship shall be liable to a fine which may extend to one thousand rupees.

(3) When a ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty, any person authorised under this Act to detain or survey such ship, the owner and master of such ship shall each be liable to pay all expenses of, and incidental to, such person being so taken to sea, and shall also each be liable to a fine which may extend to one thousand rupees.

(4) When any owner or master is convicted of an offence under sub-section (3), the convicting Magistrate may inquire into and determine the amount payable on account of expenses by such owner or master under that sub-section, and may direct that the same shall be recovered from him in the manner provided for the recovery of fines.

285. When an order under this Act for the payment of any wages or other money is made by a shipping-master or a Magistrate and the money is not paid at the time or in the manner directed, the sum mentioned in the order with such further sum as may be thereby awarded for costs, may be levied by distress and sale of the moveable property of the person directed to pay the same under a warrant to be issued for that purpose by a Magistrate.

286. Where any Court or Magistrate has power to make an order directing payment to be made of any seaman's wages, fines or other sums of money, then if the person so directed to pay the same is the master or owner of a ship, and the same is not paid at the time or in the manner directed by the order, the Court or Magistrate may, in addition to any other power it or he may have for the purpose of compelling payment by warrant, direct the amount remaining unpaid to be levied by distress and sale of the ship, her tackle, furniture and apparel.

287. Where for the purposes of this Act any document is to be served on any person, that document may be served—

(a) in any case by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode; and

(b) if the document is to be served on the master of a ship, where there is one, or on a person belonging to a ship, by leaving the same for him on board that ship, with the person being or appearing to be in command or charge of the ship; and

(c) if the document is to be served on the master of a ship, where there is no master and the ship is in British India, on the managing owner of the ship, or, if there is no managing owner, on some agent of the owner, residing in British India, or, where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.

288. A Magistrate imposing a fine under this Act may, if he thinks fit, direct the whole or any part thereof to be applied in compensating any person for any detriment which he may have sustained by the act or default in respect of which the fine is imposed or in or towards payment of the expenses of the prosecution.

PART IX.

SUPPLEMENTAL.

289. (1) Where shipping master has reasons to suspect that the provisions of this Act are not complied with, that officer may—

- (a) enter on board any British ship, and
- (b) muster and examine the crew.

(2) If any person obstructs any shipping-master in the execution of his duty under this section, he shall be liable to a fine which may extend to one hundred rupees.

Ship Surveyors.

290. The Local Government may appoint competent persons for the

Power to appoint examiners and to make rules as to qualifications of ship surveyors.

purpose of examining the qualifications of persons desirous of practising the profession of a ship surveyor at any port in the territories administered by such Government, and, subject to the control of the Governor-General in Council, make rules —

(a) for the conduct of such examinations and the qualifications to be required,

(b) for the grant of certificates to qualified persons,

(c) for the fees to be paid for such examinations and certificates,

(d) for holding inquiries into charges of incompetency and misconduct on the part of holders of such certificates, and

(e) for the suspension and cancellation of such certificates.

291. No person shall, in any port in which there is a person exercising

No person to practice as ship surveyor unless qualified.

the profession of a ship surveyor and holding a certificate granted under section 290, exercise such profession in such port unless he holds a certificate granted under that section :

Provided that nothing herein contained shall prevent any person employed by Lloyd's Register of British and Foreign Shipping or Bureau Veritas from discharging any of the duties of such employment, or apply to any person specially exempted by the Local Government from the operation of this section.

292. Any person exercising the profession of a ship surveyor in

Penalty for practising as ship surveyor without certificate.

contravention of the provisions of section 291 shall be liable to a fine not exceeding one thousand rupees, and shall be incapable of maintaining any suit for any fee or reward for anything done by him.

293. Any person appointed or authorized under this Act to survey

Powers of person appointed or authorized to survey ship.

a ship may, in the execution of his duties, go on board the ship and inspect the same and every part thereof, and the machinery, equipments and cargo, and may require the unloading or removal of any cargo, ballast or tackle.

294. All rules made under this Act shall be published in the *Gazette*

Provisions with respect to rules.

of India or the local official Gazette, as the case may be, and no such publication shall have effect as if enacted in this Act.

Protection to persons acting under Act.

295. No suit or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

296. (1) The enactments mentioned in Schedule V are hereby repealed to the extent specified in the fourth column thereof.

Repeal.

(2) Any body constituted and any office established under any enactment hereby repealed shall continue and be deemed to have been constituted or established, as the case may be, under this Act.

(3) The mention of particular matters in this section shall not be held to prejudice or affect the general application of the provisions of the General Clauses Act, 1897, with regard to the effect of repeals.

X of 1897.

SCHEDULE I.

(See section 9).

TABLE A.

Fees to be charged for matters transacted at Shipping Offices.

1. Engagement or discharge of crews—

			RS.	A.	P.
In ships under 100 tons...	...	...	3	0	0
From 100 to 200 " ...	...	...	7	0	0
" 200 to 300 " ...	...	...	10	0	0
" 300 to 400 " ...	...	...	12	8	0
" 400 to 500 " ...	...	...	15	0	0
" 500 to 600 " ...	...	...	17	8	0
" 600 to 700 " ...	...	...	20	0	0
" 700 to 800 " ...	...	...	22	8	0
" 800 to 900 " ...	...	...	25	0	0
" 900 to 1,000 " ...	...	...	27	8	0
Above 1,000 tons " ...	...	...	30	0	0

and so on for ships of larger tonnage, adding for every one hundred tons above one thousand, two rupees and eight annas.

2. Engagement or discharge of seamen separately—one rupee for each seaman.

TABLE B.

Sums to be deducted from Wages by way of partial Repayment of Fees in Table A.

1. In respect of engagements and discharges of crews, upon each engagement and each discharge—

			RS.	A.	P.
From wages of any mate, purser, engineer, surgeon, carpenter or steward ...	...	...	0	12	0
From wages of all others except apprentices ...	...	...	0	8	0

2. In respect of engagements and discharges of seamen, separately, upon each engagement and each discharge ...

0 8 0

SCHEDULE II.

(See section 131.)

Rates of fees payable in respect of Survey of steam-ships.

			RS.
For steam-ships of less than 200 tons ...	...	...	40
Do. 200 tons and up to 350 tons ...	...	...	50
Do. 300 tons and up to 700 tons ...	...	...	60
Do. 700 tons and up to 1,000 tons ...	...	...	80
Do. 1,000 tons and up to 1,500 tons ...	...	...	100
Do. 1,500 tons and upwards ...	...	...	120

SCHEDULE III.

(See section 146.)

PART I.

(Applied sections of the Merchant Shipping Act, 1894.)

332. If any passenger, whether a cabin or a steerage passenger, is either taken off any ship which is carrying any steerage passenger on a voyage from any part of His Majesty's dominions and is damaged, wrecked, sunk or otherwise destroyed, or if any such passenger is picked up at sea from any boat, raft, or otherwise, it shall be lawful—

Expenses of rescue and conveyance of wrecked passengers.

(a) if the port to which such passenger (in this Act referred to as "wrecked passenger") is conveyed is in the United Kingdom, for a Secretary of State; and

(b) if the port is in a British possession, for the Governor of that possession, or any person authorized by him for the purpose; and

(c) if the port is elsewhere, for the British Consular Officer there; to defray all or any part of the expenses thereby incurred.

333. (1) If any passenger, whether a cabin or a steerage passenger from any ship which is carrying any steerage passengers on a voyage from any port in His Majesty's dominions, finds himself, without any neglect or default of his own, at any port outside the British Islands other than the port for which the ship was originally bound, or at which he, or the Board of Trade, or any public officer or other person on his behalf, has contracted that he should land, it shall be lawful—

Forwarding of passengers by Governors or Consuls.

(a) if the place is in a British possession, for the Governor of that possession, or any person authorized by the Governor for the purpose; and

(b) if the place is elsewhere, for the British Consular Officer there; to forward the passenger to his intended destination, unless the master of the ship, within forty-eight hours of the arrival of the passenger, gives to the Governor or Consular Officer, as the case may be, a written undertaking to forward or convey within six weeks thereafter the passenger to his original destination, and forwards or conveys him accordingly within that period.

(2) A passenger so forwarded by, or by the authority, of a Governor or a British Consular Officer shall not be entitled under this Part of this Act to the return of his passage money, or to any compensation for loss of passage.

334. (1) All expenses incurred under this Part of this Act by, or by the authority of, a Secretary of State, Governor of a British possession, or Consular Officer, in respect of a wrecked passenger, or forwarding of a passenger to his destination, including the cost of maintaining the passenger, until forwarded to his destination, and of all necessary bedding, provisions, and stores, shall be

Recovery of expenses incurred in conveying wrecked passengers and forwarding passengers.

a joint and several debt to the Crown from the owner, charterer, and master of the ship on board of which the passenger had embarked.

(2) In any proceeding for the recovery of that debt, a certificate purporting to be under the hand of a Secretary of State, Governor or Consular Officer, and stating the circumstances of the case, and the total amount of the expenses, shall be admissible in evidence in manner provided by this Act, and shall be sufficient evidence of the amount of the expenses, and of the fact that the same were duly incurred, unless the defendant specially pleads and duly proves that the certificate is false and fraudulent, or that the expenses were not duly incurred under this Act.

(3) The sum recovered on account of the expenses shall not exceed twice the total amount of passage money which the owner, charterer, or master of the emigrant ship proves to have been received by him or on his account, or to be due to and recoverable by him or on his account in respect of the whole number of passengers, whether cabin or steerage who embarked in the ship.

335. A policy of assurance effected in respect of any steerage, passage or compensation money by any person by this Part or this Act made liable, in the events aforesaid, to provide such passage or to pay such money, or in respect of any other risk under this Part of this Act, shall not be invalid by reason of the nature of the risk or interest sought to be covered by the policy of assurance.

Validity of insurance of passage money.

PART II.

FORM OF GOVERNOR'S OR CONSUL'S CERTIFICATE OF EXPENDITURE IN THE CASE OF PASSENGERS SHIPWRECKED, &c.

(See applied section 334 above.)

(a) *N.B.*—1. If more passengers were rescued than forwarded, or if bedding, &c., was not supplied, alter the certificate to suit the facts of the case.

(b) *N.B.*—2. Omit words in brackets when necessary.

(c) *N.B.*—3. State generally the nature of the disaster and where it occurred. But if the passengers were only left behind without any default of their own, state the fact accordingly.

I hereby certify that, acting under, and in conformity with, the provisions of Part III of the Indian Merchant Shipping Act, 192 , I have defrayed the expenses incurred in rescuing, maintaining, supplying, with necessary bedding; provisions and stores (a), and in forwarding to their destination passengers (including cabin passengers (b),] who were proceeding from to in the passenger-ship which was wrecked at sea, &c. (c)

And I further certify, for the purposes of Part of the said Act, that the total amount of such expenses is and that such expenses were duly incurred by me under the said Act. Given under my hand this.....day of , 19

*{ Governor of, &c., (or as the case may be)
{ His Britannic Majesty's Consul at*

SCHEDULE IV.

(See section 279).

Declaration between the Government of the United Kingdom of Great Britain and Ireland and the Government of the French Republic with reference to the disposal of the proceeds of Wrecks on their respective Coasts.

The Government of Her Majesty the Queen of the United Kingdom of Britain and Ireland, Empress of India, and the Government of the French Republic, desiring to regulate by a new Agreement questions relative to the disposal of the proceeds of wrecks on the coasts of the two States, have agreed to replace the Declaration signed at London on the 16th June 1879, by the following arrangements :—

ARTICLE I.

When any ship belonging to the subjects of one of the two Contracting States is wrecked or stranded on the coast of the other, the competent local authorities shall, with as little delay as possible, bring the fact to the knowledge of the Consul-General, Consul, Vice-Consul or Consular Agent nearest to the spot where the wreck or stranding has taken place.

ARTICLE II.

All operations relative to the salvage of British ships which may be wrecked or stranded on the coasts of France shall be directed by the Consuls-General, Consuls, Vice-Consuls or Consular Agents of Great Britain, and reciprocally the French Consuls-General, Consuls, Vice-Consuls and Consular Agents shall direct all operations relative to the salvage of ships of their nation wrecked or stranded on the coasts of Great Britain.

ARTICLE III.

If the owners of the ship and cargo, or their duly authorized representatives, shall be present and shall claim it, the Consuls-General, Consuls, Vice-Consuls and Consular Agents shall hand over to them the conduct of the salvage operations after requiring the deposit of the ship's papers, as well as the reimbursement of the expenses already defrayed, and a sufficient guarantee for those incurred before the operations were handed over, and which may not have been already settled.

ARTICLE IV.

The intervention of the Local authorities shall only take place in the two countries for the purpose of assisting the Consular authority, of maintaining order, of securing the interests of the salvors if they are strangers to the ship-wrecked crews, and of assuring the due execution of the arrangements to be carried out for the entry and departure of the merchandise saved.

In the absence, and until the arrival, of the Consuls-General, Consuls, Vice-Consuls or Consular Agents, the local authorities shall, moreover, take all necessary measures for the protection of the persons and for the preservation of the articles which shall have been saved from the wreck.

This intervention shall not give rise to any charges, with the exception of those which the salvage operations and the protection of the articles saved shall have rendered necessary, and those to which national ships would, under similar circumstances, be liable. These charges shall be paid according to the circumstances of the case, either by the Agents of the Consular service, or by their owners or their proxies.

In case absence, sickness or any other cause should prevent the Agents of the Consular service from seeing to the operations and the management of the salvage, the local authorities who may be charged with the operations and management in question shall be bound to remit to the aforesaid Agents the ship's papers and the net proceeds of the ship and the cargo.

ARTICLE V.

The merchandise and articles saved shall not be liable to any customs-duties, unless they are intended for home consumption, in which case they shall pay the same duties as they would have had to pay if they had been imported in national vessels.

ARTICLE VI.

The stipulations of the present Declaration shall be applicable to all the Colonies and foreign possessions of Her Britannic Majesty, excepting to those hereinafter named, that is to say, except to—

India.	Natal.	Tasmania.
The Dominion of Canada.	New South Wales.	South Australia.
Newfoundland.	Victoria.	Western Australia.
The Cape.	Queensland.	New Zealand :

Provided always that the stipulations of the present Declaration shall be made applicable to any of the abovenamed Colonies or foreign possessions on whose behalf notice to that effect shall have been given by Her Britannic Majesty's Representative to the French Republic within one year from the date of the signature of the present Declaration.

The stipulations of the present Declaration shall be applicable to all the Colonies and foreign possessions of France.

ARTICLE VII.

The present Declaration shall come into operation three months after the date of its signature, and shall remain in force until the expiration of one year from the day on which either party may give notice of its intention to terminate it.

In witness whereof, the undersigned Plenipotentiaries His Excellency the Earl of Lytton, Ambassador of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Excellency M. Eugene Spuller, Minister for Foreign Affairs have signed the present Declaration and have affixed thereto their seals.

Done at Paris, this twenty-third day of October, 1889.

(L. S.) LYTTON.

(L. S.) E. SPULLER.

SCHEDULE V.

(See section 296).

ENACTMENTS REPEALED.

Year.	Number.	Subject or title.	Extent of repeal.
1850	XIX	The Apprentices Act, 1850.	Sections 5 and 7 so far as they have not been repealed. In section 10 the words "or, if the apprentice is bound to the sea service, in the office of the person appointed under Act X, 1841, to make registry of ships at the port where the apprentice is to begin his service" and the words "or registering officer," In sections 11, 12 and 20 the words "or registering officer."
1859	I	The Indian Merchant Shipping Act, 1859.	The whole so far as it has not been repealed.
1874	XV	The Laws Local Extent Act, 1874.	So much of the First Schedule as relates to Act I of 1859.
1876	XIII	The Indian Merchant Seamen's Act, 1876.	The whole.
1880	VII	The Indian Merchant Shipping Act, 1880.	The whole so far as it has not been repealed.
1883	V	The Indian Merchant Shipping Act, 1883.	The whole except section 38.
1884	VII	The Indian Steam-ships Act, 1884.	The whole so far as it has not been repealed.
1887	X	The Native Passenger Ships Act, 1887.	The whole.
1890	III	The Indian Steam-ships Law Amendment Act, 1890.	The whole so far as it has not been repealed.
1891	VI	The Indian Merchant Shipping Law Amendment Act, 1891.	The whole so far as it has not been repealed.
1891	XII	The Amending Act, 1891 ...	So much of the second Schedule as relates to the Indian Merchant Seamen's Act, 1876, the Indian Merchant Shipping Act, 1880, the Indian Merchant Shipping Act, 1883, and the Indian Steam-ships Law Amendment Act, 1890.
1891	XVII	The Deck and Load Lines Act, 1891.	The whole.
1895	XIV	The Pilgrim Ships Act, 1895	The whole.
1897	XIV	The Indian Short Titles Act, 1897.	So much of the Schedule as relates to the Indian Merchant Shipping Act, 1859, the Indian Steamships Law Amendment Act, 1890, and the Indian Merchant Shipping Law Amendment Act, 1891.
1900	VI	The Lower Burma Courts Act, 1900.	So much of the Second Schedule as relates to the Indian Merchant Shipping Act, 1883.
1902	III	The Indian Steam-ships (Amending and Validation) Act, 1902.	Section 3.
1906	VI	The Indian Merchant Shipping (Amendment) Act, 1906.	The whole.

Year.	Number.	Subject or title.	Extent of repeal.
1908	XVIII	The Indian Merchant Shipping (Amendment) Act, 1908.	The whole.
1909	I	The Indian Steam-ships Law Amendment Act, 1909.	The whole so far as it has not been repealed.
1914	IV	The Decentralization Act, 1914.	So much of the Schedule, Part I as relates to the Pilgrim Ships Act, 1896.
1914	X	The Repealing and Amending Act, 1914.	So much of the Second Schedule as relates to the Indian Merchant Shipping Act, 1859, the Indian Merchant Seamen's Act, 1876, the Indian Steamships Act, 1884, and the Deck and Load Lines Act, 1891.
1917	I	The Inland Steam-Vessels Act, 1917.	So much of Schedule II as relates to the Inland Steam-ships Law Amendment Act, 1890, and the Indian Steam-ships Law Amendment Act, 1909.
1919	XXV	The Indian Merchant Ship ping Law (Amendment) Act, 1919.	The whole.
1920	I	The Indian Steam-ships (Amendment) Act, 1920.	The whole.
1920	XXXVIII	The Devolution Act, 1920 ...	So much of the First Schedule as relates to the Indian Merchant Shipping Act, 1880, the Indian Steam-ships Act, 1884, and the Native Passenger Ships Act, 1887.
1920	XLI	The Indian Wireless Tele- graphy (Shipping) Act, 1920.	The whole.

Mines Act, 1923.

(ACT IV OF 1923.)

[Passed on the 23rd February, 1923.]

An Act to amend and consolidate the law relating to the regulation and inspection of mines.

WHEREAS it is expedient to amend and consolidate the law relating to the regulation and inspection of mines ; It is hereby enacted as follows :

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called the Indian Mines Act, 1923.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) It shall come into force on the first day of July, 1924.

Saving of Reg. XII of 1887.

2. Nothing in this Act shall be construed to affect the provisions of the Upper Burma Ruby Regulation, 1887.

Definitions. 3. In this Act, unless there is anything repugnant in the subject or context,—

(a) "agent," when used in relation to a mine, means any person appointed or acting as the representative of the owner in respect of the management of the mine or of any part thereof, and as such superior to a manager under this Act;

(b) "Chief Inspector" means the Chief Inspector of Mines appointed under this Act;

(c) "child" means a person under the age of thirteen years; —

(d) a person is said to be "employed" in a mine who works under appointment by or with the knowledge of the manager, whether for wages or not, in any mining operation, or in cleaning or oiling any part of any machinery used in or about the mine, or in any other kind of work whatsoever incidental, to, or connected with, mining operations;

(e) "Inspector" means an Inspector of Mines appointed under this Act, and includes a District Magistrate when exercising any power or performing any duty of an Inspector which he is empowered by this Act to exercise or perform;

(f) "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes all works, machinery, tramways and sidings, whether above or below ground, in or adjacent to or belonging to a mine:

Provided that it shall not include any part of such premises on which a manufacturing process is being carried on unless such process is a process for coke making or the dressing of minerals;

(g) "owner," when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof, but does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine subject to any lease, grant or license for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability;

(h) "prescribed" means prescribed by regulations, rules or bye-laws;

(i) "qualified medical practitioner" means any person registered under the Medical Act, 1858, or any Act amending the same or under 21 & 22 Vict., any Act of any Legislature in British India providing for the maintenance of a register of medical practitioners, and includes, in any area where no such last-mentioned Act is in force, any person declared by the Local Government by notification in the local official Gazette, to be a qualified medical practitioner for the purposes of this Act;

(j) "regulations," "rules" and "bye-laws" mean respectively regulations, rules and bye-laws made under this Act;

(k) "serious bodily injury" means any injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb, or the permanent loss of or injury to the sight

or hearing, or the fracture of any limb or the enforced absence of the injured person from work for a period exceeding twenty days; and

(i) "week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night.

CHAPTER II.

INSPECTORS.

4. (1) The Governor-General in Council may, by notification in the Gazette of India, appoint a duly qualified person to be Chief Inspector of Mines for the whole of British India, and duly qualified persons to be Inspectors of Mines subordinate to the Chief Inspector.

Chief Inspector
and Inspectors.

(2) No person shall be appointed to be Chief Inspector or an Inspector, or, having been appointed shall continue to hold such office who is or becomes directly or indirectly interested in any mine or mining rights in India.

(3) The District Magistrate may exercise the powers and perform the duties of an Inspector subject to the general or special orders of the Local Government:

Provided that nothing in this sub-section shall be deemed to empower a District Magistrate to exercise any of the powers conferred by section 19 or section 32.

(4) The Chief Inspector and every Inspector shall be deemed to be **XLV of 1860.** a public servant within the meaning of the Indian Penal Code.

5. (1) The Chief Inspector may, by order in writing, prohibit or restrict the exercise by any Inspector named, or any class of Inspectors specified, in the order of any power conferred on Inspectors by this Act, and shall subject as aforesaid, declare the local area or areas within which, or the group or class of mines with respect to which, Inspectors shall exercise their respective powers.

Functions of Ins-
pectors.

(2) The Inspector shall give information to owners, agents and managers of mines, situated within the local area or areas or belonging to the group or class of mines, in respect of which he exercises powers under sub-section (1) as to all regulations and rules which concern them respectively and as to the places where copies of such regulations and rules may be obtained.

Powers of Inspec-
tors of Mines.

6. The Chief Inspector and any Inspector may—

(a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and of the regulations, rules and bye-laws and of any orders made thereunder are observed in the case of any mine;

(b) with such assistants (if any) as he thinks fit, enter, inspect and examine any mine or any part thereof at any reasonable time by day or night, but not so as unreasonably to impede or obstruct the working of the mine;

(c) examine into, and make inquiry respecting, the state and condition of any mine or any part thereof, the ventilation of the mine, the sufficiency of the bye-laws for the time being in force relating to the mine, and all matters and things connected with or relating to the safety of the persons employed in the mine.

7. Any person in the service of the Government duly authorised by a special order in writing of the Chief Inspector or of an Inspector in this behalf may, for the purpose of surveying, levelling or measuring in any mine, after giving not less than three days' notice to the manager of such mine, enter the mine and may survey, level or measure the mine or any part thereof at any reasonable time by day or night but not so as unreasonably to impede or obstruct the working of the mine.

8. Every owner, agent and manager of a mine shall afford the Chief Inspector and every Inspector and every person authorised under section 7 all reasonable facilities for making any entry, inspection, survey measurement, examination or inquiry under this Act.

9. (1) All copies of, and extracts from, registers or other records appertaining to any mine, and all other information acquired by the Chief Inspector or an Inspector or by any one assisting him, in the course of the inspection of any mine under this Act or acquired by any person authorised under section 7 in the exercise of his duties thereunder, shall be regarded as confidential

(2) If the Chief Inspector, or an Inspector or any other person referred to in sub-section (1) discloses to any one, other than a Magistrate or an officer to whom he is subordinate, any such information as aforesaid without the consent of the Governor-General in Council or of the Local Government, he shall be guilty of a breach of official trust, and shall be punishable in the manner provided by section 4 of the Indian Official Secrets Act, 1889.

XV of 1889.

(3) No Court shall proceed to the trial of any offence under this section except on complaint made by order of, or under authority from, the Governor-General in Council or the Local Government, or made by a person aggrieved by the offence.

CHAPTER III

MINING BOARDS AND COMMITTEES.

10. (1) The Local Government may constitute for the province, or for any part of the province, or for any group or class of mines in the province, a Mining Board consisting of—

(a) a person in the service of the Government, not being the Chief Inspector or an Inspector, nominated by the Local Government to act as chairman ;

(b) the Chief Inspector or an Inspector ;

(a) two persons, neither of whom shall be the Chief Inspector or an Inspector nominated by the Local Government, of whom one shall be a person qualified to represent the interests of persons employed in mines ;

(d) two persons nominated by owners of mines or their representatives in such manner as may be prescribed.

(2) The chairman shall appoint a person to act as secretary to the Board.

(3) The Local Government may give directions as to the payment of travelling expenses incurred by the secretary or any member of any such Mining Board in the performance of his duty as such secretary or member.

Committees. 11. (1) Where under this Act any question relating to a mine is referred to a Committee, the Committee shall consist of—

(a) a chairman nominated by the Local Government or by such officer or authority as the Local Government may authorise in this behalf ;

(b) a person nominated by the chairman and qualified by experience to dispose of the question referred to the Committee ; and

(c) two persons of whom one shall be nominated by the owner, agent or manager of the mine concerned, and the other shall be nominated by the Local Government to represent the interest of the persons employed in the mine.

(2) No Inspector of person employed in or in the management of any mine concerned shall serve as chairman or member of a Committee appointed under this section.

(3) Where an owner, agent or manager fails to exercise his power of nomination under clause (c) of sub-section (1), the Committee may, notwithstanding such failure, proceed to inquire into and dispose of the matter referred to it.

(4) The Committee shall hear and record such information as the Chief Inspector or the Inspector, or the owner, agent or manager of the mine concerned, may place before it, and shall intimate its decision to the Chief Inspector or the Inspector and to the owner, agent or manager of the mine, and shall report its decision to the Local Government.

(5) On receiving such report the Local Government shall pass orders in conformity therewith unless the Chief Inspector or the owner, agent or manager of the mine has lodged an objection to the decision of the Committee, in which case the Local Government may proceed to review such decision and to pass such orders in the matter as it may think fit. If an objection is lodged by the Chief Inspector, notice of the same shall forthwith be given to the owner, agent or manager of the mine.

(6) The Local Government may give directions as to the remuneration, if any to be paid to the members of the Committee or any of them and as to the payment of the expenses of the inquiry including such remuneration.

12. (1) Any Mining Board constituted under section 10 and any Committee constituted under section 11 may exercise such of the powers of an Inspector under this Act as it thinks necessary or expedient to exercise for the purpose of deciding or reporting upon any matter referred to it.

Powers of Mining Boards.

(2) Every Mining Board constituted under section 10 and every Committee appointed under section 11 shall have the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects; and every person required by any such Mining Board or Committee to furnish information before it shall be deemed to be legally bound to do so within the meaning of section 176 of the Indian Penal Code.

13. The Local Government may direct that the expenses of any inquiry conducted by a Mining Board constituted under section 10 or by a Committee appointed under section 11 shall be borne in whole or in part by the owner or agent of the mine concerned, and the amount so directed to be paid may, on application by the Chief Inspector or an Inspector to a Magistrate having jurisdiction at the place where the mine is situated or where such owner or agent is for the time being resident, be recovered by the distress and sale of any moveable property within the limits of the Magistrate's jurisdiction belonging to such owner, agent or manager.

CHAPTER IV.

MINING OPERATIONS AND MANAGEMENT OF MINES.

14. The owner, agent or manager of a mine shall, in the case of an existing mine within one month from the commencement of this Act, or, in the case of a new mine, within three months after the commencement of mining operations, give to the District Magistrate of the district in which the mine is situated notice in writing in such form and containing such particulars relating to the mine as may be prescribed.

15. (1) Save as may be otherwise prescribed, every mine shall be under one manager who shall have the prescribed qualifications and shall be responsible for the control, management and direction of the mine, and the owner or agent of every mine shall appoint himself or some other person, having such qualifications, to be such manager.

(2) If any mine is worked without there being a manager for the mine as required by sub-section (1), the owner and agent shall each be deemed to have contravened the provisions of this section.

16. (1) The owner, agent and manager of every mine shall be responsible that all operations carried on in connexion therewith are conducted in accordance with the provisions of this Act and of the regulations, rules and bye-laws and of any orders made thereunder.

(2) In the event of any contravention of any such provisions by any person whomsoever, the owner, agent and manager of the mine shall each be deemed also to be guilty of such contravention unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing those provisions, to prevent such contravention.

Provided that the owner or agent shall not be so deemed if he proves—

(a) that he was not in the habit of taking, and did not in respect of the matter in question take, any part in the management of the mine; and

(b) that he had made all the financial and other provisions necessary to enable the manager to carry out his duties; and

(c) that the offence was committed without his knowledge, consent or connivance;

(3) Save as herein before provided, it shall not be a defence in any proceedings brought against an owner or agent of a mine under this section that a manager of the mine has been appointed in accordance with the provisions of this Act.

CHAPTER V.

PROVISIONS AS TO HEALTH AND SAFETY.

17. There shall be provided and maintained for every mine latrine and urinal accommodation of such kind and on such scale, and such supply of water fit for drinking, as may be prescribed.

Conservancy.

18. At every mine in respect of which the Local Government may, by notification in the local official gazette, declare this section to apply, such supply of ambulances or stretchers, and of splints, bandages and other medical requirements, as may be prescribed, shall be kept ready at hand in a convenient place and in good and serviceable order.

Medical appliances.

19. (1) If, in any respect which is not provided against by any express provision of this Act or of the regulations, rules or bye-laws or of any orders made thereunder, it appears to the Chief Inspector or the Inspector that any mine, or any part thereof or any matter, thing or practice in or connected with the mine, or with the control, management or direction thereof, is dangerous to human life or safety, or defective so as to threaten, or tend to the bodily injury of any person, he may give notice in writing thereof to the owner, agent or manager of the mine, and shall state in the notice the particulars in which he considers the mine or part thereof, or the matter, thing or practice, to be dangerous or defective and require the same to be remedied within such time as he may specify in the notice.

Powers of Inspectors when causes of danger not expressly provided against exist or when employment of persons is dangerous.

(2) If the Chief Inspector or an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector is of opinion that there is urgent and immediate danger to the life or safety of any person employed in any mine or part thereof, he may, by an order in writing containing a statement of the grounds of his opinion, prohibit, until the danger is removed, the employment in or about the mine or part thereof of any person whose employment is not in his opinion reasonably necessary for the purpose of removing the danger.

(3) Where an order has been made under sub-section (2) by an Inspector, the owner, agent or manager of the mine may, within ten days after the receipt of the order, appeal against the same to the Chief Inspector who may confirm, modify or cancel the order.

(4) The Chief Inspector or the Inspector making a requisition under sub-section (1) or an order under sub-section (2), and the Chief Inspector making an order other than an order of cancellation in appeal under sub-section (3), shall forthwith report the same to the Local Government and shall inform the owner, agent or manager of the mine that such report has been so made.

(5) If the owner, agent or manager of the mine objects to a requisition made under sub-section (1) or to an order made by the Chief Inspector under sub-section (2), or sub-section (3), he may, within twenty days after the receipt of the notice containing the requisition or of the order or after the date of the decision of the appeal, as the case may be, send his objection in writing, stating the grounds thereof, to the Local Government, which shall refer the same to a Committee.

(6) Every requisition made under sub-section (1), or order made under sub-section (2), or sub-section (3) to which objection is made under sub-section (5), shall be complied with pending the receipt at the mine of the decision of the Committee:

Provided that the Committee may, on the application of the owner, agent or manager, suspend the operation of a requisition under sub-section (1) pending its decision on the objection.

(7) Nothing in this section shall affect the powers of a Magistrate under section 144 of the Code of Criminal Procedure, 1898. V of 1898.

20. When any accident occurs in or about a mine causing loss of life or serious bodily injury, or when an accidental explosion, ignition, outbreak of fire or irruption of water occurs in or about a mine, the owner, agent or manager of the mine shall give such notice of the occurrence to such authorities, and in such form, and within such time, as may be prescribed.

Notice to be given
of accidents.

21. (1) When any accidental explosion, ignition, outbreak of fire or irruption of water or other accident has occurred in or about any mine, the Local Government, if it is of opinion that a formal inquiry into the causes of, and circumstances attending the accident ought to be held, may appoint competent person to hold such inquiry, and may also appoint any person or persons possessing legal or special knowledge to act as assessor or assessors in holding the inquiry.

Power of Govern-
ment to appoint
court of inquiry in
cases of accidents.

(2) The person appointed to hold any such inquiry shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for V of 1908. the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects; and every person required by such person as aforesaid to furnish any information shall be deemed to be legally bound to do so within the meaning of section 176 of the Indian Penal Code. XLV of 1860.

(3) Any person holding an inquiry under this section may exercise such of the powers of an Inspector under this Act as he may think it necessary or expedient to exercise for the purposes of the inquiry.

(4) The person holding an inquiry under this section shall make a report to the Local Government stating the causes of the accident and its circumstances, and adding any observations which he or any of the assessors may think fit to make.

22. The Local Government may cause any report submitted by a Committee under section 11 or by a court of inquiry under section 21 to be published at such time and in such manner as it may think fit.

Publication of reports.

CHAPTER VI.

HOURS AND LIMITATION OF EMPLOYMENT.

Hours of employment.

23. No person shall be employed in a mine—

(a) on more than six days in any one week,

(b) if he works above ground, for more than sixty hours in any one week,

(c) if he works below ground, for more than fifty-four hours in any one week.

24. Nothing in section 23 shall apply to persons who may by rules be defined to be persons holding positions of supervision or management or employed in a confidential capacity.

Supervising staff.

25. In case of an emergency involving serious risk to the safety of the mine or of persons employed therein, the manager may, subject to the provisions of section 19, permit persons to be employed in contravention of section 23 on such work as may be necessary to protect the safety of the mine or of the persons employed therein :

Exemption from provisions regarding employment.

Provided that, where such occasion arises, a record of the fact shall immediately be made by the manager and shall be placed before the Chief Inspector or the Inspector at his next inspection of the mine.

26. No child shall be employed in a mine, or be allowed to be present in any part of a mine which is below ground.

Children.

27. (1) If any question arises between the Chief Inspector or the Inspector and the manager of any mine as to whether any person is a child, the question shall, in the absence of a certificate as to the age of such person granted in the prescribed manner, be referred by the Chief Inspector or the Inspector for decision to a qualified medical practitioner.

Disputes as to age.

(2) Every certificate as to the age of a person which has been granted in the prescribed manner and any certificate granted by a

qualified medical practitioner of a reference under sub-section (1) shall, for the purposes of this Act, be conclusive evidence as to the age of the person to whom it relates.

28. For every mine there shall be kept in the prescribed form and place a register of all persons employed in the mine, of their hours of work, of their days of rest, and of the nature of their respective employments.

Register of employees.

CHAPTER VII.

REGULATIONS, RULES AND BYE-LAWS.

29. The Governor-General in Council may, by notification in the Gazette of India, make regulations consistent with this Act for all or any of the following purposes, namely:—

Power of Governor-General in Council to make regulations.

(a) for prescribing the qualifications to be required by a person for appointment as Chief Inspector or Inspector ;

(b) for prescribing and regulating the duties and powers of the Chief Inspector and of Inspectors in regard to the inspection of mines under this Act ;

(c) for prescribing the duties of owners, agents and managers of mines and of persons acting under them ;

(d) for prescribing the qualifications of managers of mines and of persons acting under them ;

(e) for regulating the manner of ascertaining, by examination or otherwise, the qualifications of managers of mines and persons acting under them, and the granting and renewal of certificates of competency ;

(f) for fixing the fees, if any, to be paid in respect of such examinations and of the grant and renewal of such certificates ;

(g) for determining the circumstances in which and the conditions subject to which it shall be lawful for more mines than one to be under a single manager, or for any mine or mines to be under a manager not having the prescribed qualifications ;

(h) for providing for the making of inquiries into charges of misconduct or incompetency on the part of managers of mines and persons acting under them and for the suspension and cancellation of certificates of competency ;

(i) for regulating, subject to the provisions of the Indian Explosives Act, 1884, and of any rules made thereunder, the storage and use of IV of 1884. explosives ;

(j) for prohibiting, restricting or regulating the employment in mines or in any class of mines of women either below ground or on particular kinds of labour which are attended by danger to the life, safety or health of such women ;

(k) for providing for the safety of the persons employed in a mine, their means of entrance thereinto and exit therefrom, the number of shafts or outlets to be furnished, and the fencing of shafts, pits, outlets, pathways and subsidences ;

(l) for providing for the safety of the roads and working places in mines, including the siting and maintenance of pillars and the maintenance of sufficient barriers between mine and mine ;

(m) for providing for the ventilation of mines and the action to be taken in respect of dust and noxious gases ;

(n) for providing for the care, and the regulation of the use, of all machinery and plant and of all electrical apparatus used for signalling purposes ;

(o) for requiring and regulating the use of safety lamps in mines ;

(p) for providing against dangers arising out of the accumulation of water in mines ;

(q) for prescribing the notices of accidents and dangerous occurrences, and the notices, reports and returns of mineral output, persons employed and other matters provided for by regulations, to be furnished by owners, agents and managers of mines, and for prescribing the forms of such notices, returns and reports the persons and authorities to whom they are to be furnished, the particulars to be contained in them, and the time within which they are to be submitted ;

(r) for prescribing the plans to be kept by owners, agents and managers of mines and the manner and places in which such plans are to be kept for purposes of record ;

(s) for regulating the procedure on the occurrence of accidents or accidental explosions or ignitions in or about mines ;

(t) for prescribing the form of, and the particulars to be contained in, the notice to be given by the owner, agent or manager of a mine under section 14 ; and

(u) for prescribing the notice to be given by the owner, agent or manager of a mine before mining operations are commenced at or extended to any point within fifty yards of any railway subject to the provisions of the Indian Railways Act, 1890, or of any public work or classes of public works which the Local Government may, by general or special order, specify in this behalf.

IX of 1890.

Power of Local Governments to make rules.

30. The Local Government may, subject to the control of the Governor-General in Council, by notification in the local official Gazette, make rules consistent with this Act for all or any of the following purposes, namely :—

(a) for providing for the appointment of chairmen and members of Mining Boards, and for regulating the procedure of such Boards ;

(b) for providing for the appointment of courts of inquiry under section 21, for regulating the procedure and powers of such courts, for the payment of travelling allowance to the members and for the recovery of the expenses of such courts from the manager, owner or agent of the mine concerned ;

(c) for prescribing the scale of latrine and urinal accommodation to be provided at mines, the provision to be made for the supply of

drinking-water, the supply and maintenance of medical appliances and comforts, the formation and training of rescue brigades, and the training of men in ambulance work ;

(d) for defining the persons who shall, for the purposes of section 24, be deemed to be persons holding positions of supervision or management or employed in a confidential capacity ;

(e) for prohibiting the employment in mines of persons or any class of persons who have not been certified by a qualified medical practitioner to be more than thirteen years of age and for prescribing the manner and the circumstances in which such certificates may be granted and revoked ;

(f) for prescribing the form of register required by section 28 ;

(g) for prescribing abstracts of this Act and the vernacular in which the abstracts and the regulations, rules and bye-laws shall be posted as required by sections 32 and 33 ;

(h) for requiring the fencing of any mine or part of a mine, whether the same is being worked or not, where such fencing is necessary for the protection of the public ;

(i) for the protection from injury, in respect of any mine when the workings are discontinued, of property vested in His Majesty or any local authority or railway company as defined in the Indian Railways Act, 1890 ;

IX of 1890.

(j) for requiring notices, returns and reports in connexion with any matters dealt with by rules to be furnished by owners, agents and managers of mines, and for prescribing the forms of such notices, returns and reports, the persons and authorities to whom they are to be furnished, the particulars to be contained in them, and the times within which they are to be submitted ; and

(k) generally to provide for any matter not provided for by this Act or the regulations, provision for which is required in order to give effect to this Act.

Prior publication
of regulations and
rules.

31. (1) The power to make regulations and rules conferred by sections 29 and 30 is subject to the condition of the regulations and rules being made after previous publication.

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897, as that after which a draft of regulations or rules proposed to be made will be taken under consideration, shall not be less than three months from the date on which the draft of the proposed regulations or rules is published for general information. X of 1897.

(3) Before the draft of any regulation or rule is published under this section it shall be referred in the case of a regulation to every Mining Board constituted in British India, and in the case of a rule to every Mining Board constituted in the province ; and the regulation or rule shall not be so published until each such Board has had a reasonable opportunity of reporting as to the expediency of making the same and as to the suitability of its provisions.

(4) Regulations and rules shall be published in the Gazette of India and the local official Gazette, respectively, and, on such publication, shall have effect as if enacted in this Act.

32. (1) The owner, agent or manager of a mine may, and shall, if called upon to do so by the Chief Inspector or Inspector, frame and submit to the Chief Inspector or Inspector a draft of such bye-laws, not being inconsistent with this Act or any regulations or rules for the time being in force, for the control and guidance of the persons acting in the management of, or employed in, the mine as such owner, agent or manager may deem necessary to prevent accidents and provide for the safety, convenience and discipline of the persons employed in the mine.

- (2) If any such owner, agent or manager—
- (a) fails to submit within two months a draft of bye-laws after being called upon to do so by the Chief Inspector or Inspector, or
 - (b) submits a draft of bye-laws which is not in the opinion of the Chief Inspector or Inspector sufficient,
- the Chief Inspector or Inspector may—
- (i) propose a draft of such bye-laws as appear to him to be sufficient, or
 - (ii) propose such amendments in any draft submitted to him by the owner, agent or manager as will, in his opinion, render it sufficient,

and shall send such draft bye-laws or draft amendments to the owner, agent or manager, as the case may be, for consideration.

(3) If within a period of two months from the date on which any draft bye-laws or draft amendments are sent by the Chief Inspector or Inspector to the owner, agent or manager under the provisions of subsection (2), the Chief Inspector or Inspector and the owner, agent or manager are unable to agree as to the terms of the bye-laws to be made under subsection (1), the Chief Inspector or Inspector shall refer the draft bye-laws for settlement to the Mining Board or, where there is no Mining Board, to such officer or authority as the Local Government may, by general or special order, appoint in this behalf.

(4) (a) When such draft bye-laws have been agreed to by the owner, agent or manager and the Chief Inspector or Inspector, or, when they are unable to agree, have been settled by the Mining Board or such officer or authority as aforesaid, a copy of the draft bye-laws shall be sent by the Chief Inspector or Inspector to the Local Government for approval.

(b) The Local Government may make such modifications of the draft bye-laws as it thinks fit.

(c) Before the Local Government approves the draft bye-laws, whether with or without modifications, there shall be published, in such manner as the Local Government may think best adapted for informing the persons affected, notice of the proposal to make the bye-laws and of the place where copies of the draft bye-laws may be obtained, and of the time (which shall not be less than thirty days) within which any objections

with reference to the draft bye-laws, made by or on behalf of persons affected, should be sent to the Local Government.

(d) Every objection shall be in writing and shall state—

(i) the specific grounds of objection and

(ii) the omissions, additions or modifications asked for

(e) The Local Government shall consider any objection made within the required time by or on behalf of persons appearing to it to be affected, and may approve the bye-laws either in the form in which they were published or after making such amendments thereto as it thinks fit.

(5) The bye-laws, when so approved by the Local Government, shall have effect as if enacted in this Act and the owner, agent or manager of the mine shall cause a copy of the bye-laws in English and in such vernacular or vernaculars as may be prescribed, to be posted up in some conspicuous place at or near the mine, where the bye-laws may be conveniently read or seen by the persons employed; and, as often as the same become defaced, obliterated or destroyed, shall cause them to be renewed with all reasonable despatch.

(6) The Local Government may, by order in writing, rescind in whole or in part, any bye-law so made, and thereupon such bye-law shall cease to have effect accordingly.

Posting up of
extracts from Act,
regulations, etc.

33. There shall be kept posted up at or near every mine in English and in such vernacular or vernaculars as may be prescribed, the prescribed abstracts of the Act and of the regulations and rules.

CHAPTER VIII.

PENALTIES AND PROCEDURE.

34. (1) Whoever obstructs the Chief Inspector, an Inspector or any person authorised under section 7 in the discharge of his duties under this Act, or refuses or wilfully neglects to afford the Chief Inspector, an Inspector or such person any reasonable facility for making any entry, inspection, examination or inquiry authorized by or under this Act in relation to any mine, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever refuses to produce on the demand of the Chief Inspector or Inspector any registers or other documents kept in pursuance of this Act, or prevents or attempts to prevent or does anything which he has reason to believe to be likely to prevent, any person from appearing before or being examined by an inspecting officer acting in pursuance of his duties under this Act, shall be punishable with fine which may extend to three hundred rupees.

Falsification of
records, etc.

35. Whoever—

(a) counterfeits, or knowingly makes a false statement in, any certificate, or any official copy of a certificate, granted under this Act, or

(b) knowingly uses as true any such counterfeit or false certificate or

(c) makes or produces or uses any false declaration, statement or evidence knowing the same to be false, for the purpose of obtaining for himself or for any other person a certificate, or the renewal of a certificate, under this Act, or any employment in a mine, or

(d) falsifies any plan or register or record the maintenance of which is required by or under this Act, or

(e) makes, gives or delivers any plan, return, notice, record or report containing a statement, entry or detail which is not to the best of his knowledge or belief true,

shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

36. Any person who, without reasonable excuse the burden of proving which shall lie upon him, omits to make or furnish in the prescribed form or manner or at or within the prescribed time any plan, return, notice, register, record or report required by or under this Act to be made or furnished shall be punishable with fine which may extend to two hundred rupees.

Omission to furnish plans, etc.

37. Whoever, save as permitted by section 25, contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder prohibiting, restricting or regulating the employment or presence of persons in or about a mine shall be punishable with fine which may extend to five hundred rupees.

Contravention of provisions regarding employment of labour.

38. Whoever, in contravention of the provisions of section 20, fails to give notice of any accidental occurrence shall, if the occurrence results in serious bodily injury, be punishable with fine which may extend to five hundred rupees, or, if the occurrence results in loss of life, be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees, or with both.

Notice of accidents.

39. Whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder for the contravention of which no penalty is hereinbefore provided shall be punishable with fine which may extend to one thousand rupees, and, in the case of a continuing contravention, with a further fine which may extend to one hundred rupees for every day on which the offender is proved to have persisted in the contravention after the date of the first conviction.

Disobedience of orders.

40. (1) Notwithstanding anything hereinbefore contained, whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder, shall be punishable, if such contravention results in loss of life, with imprisonment which may extend to one year, or with fine which may extend to two thousand rupees, or with both; or, if such contravention results in serious bodily injury, with imprisonment which may extend to six months, or with fine which

Contravention of law with dangerous results.

may extend to one thousand rupees, or with both ; or, if such contravention otherwise causes injury or danger to workers or other persons in or about the mine, with imprisonment which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

(2) Where a person having been convicted under this section is again convicted thereunder, he shall be punishable with double the punishment provided by sub-section (1).

(3) Any Court imposing, or confirming in appeal, revision or otherwise, a sentence of fine passed under this section may, when passing judgment, order the whole or any part of the fine recovered to be paid as compensation to the person injured, or, in the case of his death, to his legal representative :

Provided that, if the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal has been presented, before the decision of the appeal.

41. No prosecution shall be instituted against any owner, agent or manager for any offence under this Act except at the instance of the Chief Inspector or of the District Magistrate or of an Inspector authorized in this behalf by general or special order in writing by the Chief Inspector.

42. No Court shall take cognizance of any offence under this Act unless complaint thereof has been made within six months of the date on which the offence is alleged to have been committed.

43. No Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try any offence under this Act which is alleged to have been committed by any owner, agent or manager of a mine or any offence which is by this Act made punishable with imprisonment.

44. (1) If the Court trying any case instituted at the instance of the Chief Inspector or of the District Magistrate or of an Inspector under this Act is of opinion that the case is one which should, in lieu of a prosecution, be referred to a Mining Board or a Committee, it may stay the criminal proceedings, and report the matter to the Local Government with a view to such reference being made.

(2) On receipt of a report under sub-section (1), the Local Government may refer the case to a Mining Board or a Committee, or may direct the Court to proceed with the trial.

CHAPTER IX.

MISCELLANEOUS.

45. If any question arises as to whether any excavation or working is a mine within the meaning of this Act, the Local Government may decide the question, and a certificate signed by a Secretary to the Local Government shall be conclusive on the point.

46. (1) The Governor-General in Council may, by notification in the Gazette of India, exempt any local area or any mine or class of mines or any part of a mine or any class of persons from the operation of all or any specified provisions of this Act:

Power to exempt from operation of Act.

Provided that no local area or mine or group or class of mines shall be exempted from the provisions of section 26 unless it is also exempted from the operation of all the other provisions of this Act.

(2) On the occurrence of any public emergency, the Local Government may, by an order in writing, confer any exemption which might be conferred by the Governor-General in Council under sub-section (1). When such an order is made, a copy thereof shall forthwith be sent to the Governor-General in Council.

47. The Governor-General in Council and every Local Government may reverse or modify any order passed under this Act by any authority subject to his or its control, as the case may be.

Power to alter or rescind orders.

48. This Act shall apply to mines belonging to the Crown.

Application of Act to Crown mines.

49. No suit, prosecution or other legal proceeding whatever shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Saving.

50. On and from the commencement of this Act, the enactments mentioned in the Schedule shall be repealed to the extent specified in the fourth column thereof.

Repeals.

THE SCHEDULE.

ENACTMENTS REPEALED.

[See Section 50.]

Year.	No.	Short title.	Extent of repeal.
1901 1914	VIII IV	The Indian Mines Act, 1901 ... The Decentralisation Act, 1914	The whole. So much of the Schedule as relates to the Indian Mines Act, 1901.
1914	X	The Repealing and Amending Act, 1914 ...	So much of the Second Schedule as relates to the Indian Mines Act, 1901

Motor Vehicles Act, 1914.

(ACT VIII OF 1914.)

[Amended by Acts XXVII of 1920 and Act XV of 1924.]

S. 11 (2) (a).—[Amended by Act XV of 1924.]

2. In clause (a) of sub-section (2) of section 11 of the Indian Motor Vehicles Act, 1914, after the words " area in which " the words " and the duration for which " shall be inserted.

S. 11 (2) (dd).—[Added to by Act XXVII of 1920.]

2. In sub-section (2) of section 11 of the Indian Motor Vehicles Act, 1914 (hereinafter referred to as the said Act) after clause (d), the following clause shall be inserted, namely :—

“(dd) prescribing the authority by which and the conditions and limitations subject to which licenses may be suspended or cancelled.”

S. 18 (1-A).—[Added to by Act XXVII of 1920.]

3. After sub-section (1) of section 18 of the said Act the following sub-section shall be inserted, namely :—

“(1-A) The prescribed authority may, subject to such conditions and limitations as may be prescribed, cancel or suspend any license granted under this Act.”

Naval Armament Act, 1923.

(ACT VII OF 1923.)

[Passed on the 5th March, 1923.]

An Act to give effect in British India to the Treaty for the Limitation of Naval Armament.

WHEREAS it is expedient to give effect in British India to the Treaty for the Limitation of Naval Armament signed at Washington on behalf of His Majesty on the sixth day of February, 1922; It is hereby enacted as follows :—

Short title, extent, and commencement. 1. (1) This Act may be called the Indian Naval Armament Act, 1923.

(2) It extends to the whole of British India, and applies also to all subjects and servants of His Majesty in other parts of India.

(3) It shall come into force on such date as the Governor-General in Council may, by notification in the Gazette of India, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “competent Court” means the High Court or such other Court having unlimited original civil jurisdiction as the Governor-General in Council may declare to be a competent Court for the purposes of this Act;

(b) “ship” means any boat, vessel, battery or craft, whether wholly or partly constructed, which is intended to float or is capable of floating, on water, and includes all equipment belonging to any ship; and

(c) “the Treaty” means those Articles of the Treaty for the Limitation of Naval Armament signed at Washington on behalf of His Majesty on the sixth day of February, 1922, which are set out in the Schedule.

Restriction on building or equipping vessels of war. **3.** No person shall, except under and in accordance with the conditions of a license granted under this Act,—

(a) build any vessel of war, or alter, arm or equip any ship so as to adapt her for use as a vessel of war; or

(b) despatch or deliver, or allow to be despatched or delivered, from any place in British India any ship which has been, either wholly or partly, built, altered, armed or equipped as a vessel of war in any part of His Majesty's Dominions or in a State in India otherwise than under and in accordance with any law for the time being in force in that part or State.

Licenses. **4.** (1) A license under this Act for any of the purposes specified in section 3 may be granted by the Local Government, and shall not be refused unless it appears to the Local Government that such refusal is necessary for the purpose of securing the observance of the obligations imposed by the Treaty; and, where a license is granted subject to conditions, the conditions shall be such only as the Local Government may think necessary for the purpose aforesaid.

(2) An application for a license under this section shall be in such form and shall be accompanied by such designs and particulars as the Local Government may, by general or special order, require.

Offences against the Act. **5.** (1) If any person contravenes any of the provisions of section 3, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

(2) Where an offence punishable under sub-section (1) has been committed by a company or corporation, every director and manager of such company or corporation shall be punishable thereunder unless he proves that the act constituting the offence took place without his knowledge and consent.

of 1898. (3) Nothing contained in section 517 or section 518 or section 520 of the Code of Criminal Procedure, 1898, shall be deemed to authorise the destruction or confiscation under the order of any Criminal Court of any ship which is liable to forfeiture under this Act or of any part of such ship.

Liability of ships to forfeiture. **6.** Any ship which has been, either wholly or partly, built, altered, armed, or equipped as a vessel of war in British India in contravention of section 3, or in any other part of His Majesty's Dominions or any State in India in contravention of any like provision of law in force in that part or State, shall, if found in British India, be liable to forfeiture under this Act.

Seizure, detention and search of ships. **7.** (1) Where a ship is liable to forfeiture under this Act,—

(a) any Presidency Magistrate or Magistrate of the first class, or

(b) any commissioned officer on full pay in the military, naval or air service of His Majesty, or any gazetted officer of the Royal Indian Marine Service, or

(c) any officer of customs or police-officer not below such rank as may be designated in this behalf by the Governor-General in Council, may seize such ship and detain it, and, if the ship is found at sea within the territorial waters of British India, may bring it to any convenient port in British India.

(2) Any officer taking any action under sub-section (1) shall forthwith report the same through his official superiors to the Local Government.

(3) The Local Government shall, within thirty days of the seizure, either cause the ship to be released or make or cause to be made, in the manner hereinafter provided, an application for the forfeiture thereof, and may make such orders for the temporary disposal of the ship as it thinks suitable.

8. (1) An application for the forfeiture of a ship under this Act may be made by, or under authority from, the Local Government to any competent Court within the local limits of whose jurisdiction the ship is for the time being.

Procedure in forfeiture of ships.

(2) On receipt of any such application, the Court shall cause notice thereof and of the date fixed for the hearing of the application to be served upon all persons appearing to it to have an interest in the ship, and may give such directions for the temporary disposal of the ship as it thinks fit.

(3) For the purpose of disposing of an application under this section, the Court shall have the same powers and follow, as nearly as may be, the same procedure as it respectively has and follows for the purpose of the trial of suits under the Code of Civil Procedure, 1908, and any order made by the Court under this section shall be deemed to be a decree, and the provisions of the said Code in regard to the execution of decrees shall, as far as they are applicable, apply accordingly.

(4) Where the Court is satisfied that the ship is liable to forfeiture under this Act, it shall pass an order forfeiting the ship to His Majesty :

Provided that, where any person having an interest in the ship proves to the satisfaction of the Court that he has not abetted, or connived at, or by his negligence facilitated, in any way, a contravention of section 3 in respect of the ship, and such ship has not been built as a vessel of war, it may pass such other order as it thinks fit in respect of the ship or, if it be sold, of the sale-proceeds thereof :

Provided, further, that in no case shall any ship which has been altered, armed or equipped as a vessel of war be released until it has been restored, to the satisfaction of the Local Government, to such condition as not to render it liable to forfeiture under this Act.

(5) The Local Government or any person aggrieved by any order of a Court, other than a High Court, under this section may, within three months of the date of such order, appeal to the High Court.

9. Where a ship has been forfeited to His Majesty under section 8, it may be disposed of in such manner as the Local Government, subject to the control of the Governor-General in Council, directs :

Disposal of forfeit.

Provided that, where the ship is sold under this section due regard shall be had to the obligations imposed by the Treaty.

10. If, in any trial, appeal or other proceeding under the foregoing provisions of this Act, any question arises as to whether a ship is a vessel of war, or whether any alteration, arming or equipping of a ship is such as to adapt it for use as a vessel of war, the question shall be referred to and determined by the Governor-General in Council, whose decision shall be final and shall not be questioned in any Court.

11. (1) Where a ship which has been seized or detained under section 7 or section 8 and has not been released by competent authority under this Act proceeds to sea, the master of the ship shall be punishable with fine which may extend to one thousand rupees, and the owner and any person who sends the ship to sea shall be likewise so punishable unless such owner or person proves that the offence was committed without his knowledge and consent.

(2) Where any ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty any officer empowered by this Act to seize and detain the ship, the owner and master shall further each be liable, on the order of the Court trying an offence punishable under sub-section (1), to pay all the expenses of and incidental to such officer being taken to sea, and shall further be punishable with fine which may extend to one hundred rupees for every day until such officer returns or until such time as would enable him after leaving the ship to return to the port from which he was taken.

▼ of 1895. (3) Any expenses ordered to be paid under sub-section (2) may be recovered in the manner provided in the Code of Criminal Procedure, 1898, for the recovery of a fine.

12. (1) Any person empowered by this Act to seize and detain any ship may, at any reasonable time by day or night, enter any dockyard, shipyard or other place and make inquiries respecting any ship which he has reason to believe is liable to forfeiture under this Act, and may search such ship with a view to ascertaining whether the provisions of this Act have been are or being duly observed in respect thereof, and every person in charge of or employed in such place shall on request be bound to give the person so empowered all reasonable facilities for such entry and search and for making such inquiries.

▼ of 1898. (2) The provisions of sections 101, 102 and 103 of the Code of Criminal Procedure, 1898, shall apply in the case of all searches made under this section.

13. No Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall proceed to the trial of any offence punishable under this Act, and no Court shall proceed to the trial of any such offence except on complaint made by, or under authority from, the Local Government.

14. No prosecution, suit or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

THE SCHEDULE.

(See Section 2.)

ARTICLES OF TREATY FOR THE LIMITATION OF NAVAL ARMAMENT.

ARTICLE V.

No capital ship exceeding 35,000 tons (35,560 metric tons) standard displacement shall be acquired by, or constructed by, for, or within the jurisdiction of, any of the Contracting Powers.

ARTICLE VI.

No capital ship of any of the Contracting Powers shall carry a gun with a calibre in excess of 16 inches (406 millimetres).

ARTICLE IX.

No aircraft carrier exceeding 27,000 tons (27,432 metric tons) standard displacement shall be acquired by, or constructed by, for, or within the jurisdiction of, any of the Contracting Powers.

* * * *

ARTICLE X.

No aircraft carrier of any of the Contracting Powers shall carry a gun with a calibre in excess of 8 inches (203 millimetres). Without prejudice to the provisions of Article IX, if the armament carried includes guns exceeding 6 inches (152 millimetres) in calibre the total number of guns carried, except anti-aircraft guns and guns not exceeding 5 inches (127 millimetres), shall not exceed ten. If alternatively the armament contains no guns exceeding 6 inches (152 millimetres) in calibre, the number of guns is not limited. In either case the number of anti-aircraft guns and of guns not exceeding 5 inches (127 millimetres) is not limited.

ARTICLE XI.

No vessel of war exceeding 10,000 tons (10,160 metric tons) standard displacement other than a capital ship or aircraft carrier, shall be acquired by, or constructed by, for, or within the jurisdiction of, any of the Contracting Powers. Vessels not specifically built as fighting ships nor taken in time of peace under Government control for fighting purposes, which are employed on fleet duties or as troop transports or in some other way for the purpose of assisting in the prosecution of hostilities otherwise than as fighting ships, shall not be within the limitations of this Article.

ARTICLE XII.

No vessel of war of any of the Contracting Powers, hereafter laid down, other than a capital ship, shall carry a gun with a calibre in excess of 8 inches (203 millimetres).

ARTICLE XIV.

No preparations shall be made in merchant ships in time of peace for the installation of warlike armaments for the purpose of converting such ships into vessels of war, other than the necessary stiffening of decks for the mounting of guns not exceeding 6 inches (152 millimetres) calibre.

ARTICLE XV.

No vessel of war constructed within the jurisdiction of any of the Contracting Powers for a non-Contracting Power shall exceed the limitations as to displacement and armament prescribed by the present Treaty for vessels of a similar type which may be constructed by or for any of the Contracting Powers, provided, however, that the displacement for aircraft carriers constructed for a non-Contracting Power shall in no case exceed 27,000 tons (27,432 metric tons) standard displacement.

ARTICLE XVI.

If the construction of any vessel of war for a non-Contracting Power is undertaken within the jurisdiction of any of the Contracting Powers, such Power shall promptly inform the other Contracting Powers of the date of the signing of the contract and the date on which the keel of the ship is laid; and shall also communicate to them the particulars relating to the ship prescribed in Chapter II, Part 3, Section 1 (b), (4) and (5).

ARTICLE XVIII.

Each of the Contracting Powers undertakes not to dispose by gift, sale or any mode of transfer of any vessel of war in such a manner that such vessel may become a vessel of war in the navy of any foreign Power.

CHAPTER II.—PART 3.—SECTION 1.

(b) Each of the Contracting Powers shall communicate promptly to each of the other Contracting Powers the following information:—

* * * * *

(4) The standard displacement in tons and metric tons of each new ship to be laid down, and the principal dimensions, namely, length at waterline, extreme beam at or below waterline, mean draught at standard displacement.

(5) The date of completion of each new ship and its standard displacement in tons and metric tons, and the principal dimensions, namely, length at waterline, extreme beam at or below waterline, mean draught at standard displacement, at time of completion.

PART 4.—DEFINITIONS.

For the purposes of the present Treaty, the following expressions are to be understood in the sense defined in this Part.

Capital Ship.

A capital ship, in the case of ships hereafter built, is defined as a vessel of war, not an aircraft carrier, whose displacement exceeds 10,000 tons (10,160 metric tons) standard displacement, or which carries a gun with a calibre exceeding 8 inches (203 millimetres).

Aircraft Carrier.

An aircraft carrier is defined as a vessel of war with a displacement in excess of 10,000 tons (10,160 metric tons) standard displacement

designed for the specific and exclusive purpose of carrying aircraft. It must be so constructed that aircraft can be launched therefrom and landed thereon, and not designed and constructed for carrying a more powerful armament than that allowed to it under Article IX or Article X, as the case may be.

Standard Displacement.

The standard displacement of a ship is the displacement of the ship complete fully manned, engined, and equipped ready for sea, including all armament and ammunition, equipment, outfit, provisions and fresh water for crew, miscellaneous stores and implements of every description that are intended to be carried in war, but without fuel or reserve feed water on board.

The word "ton" in the present Treaty, except in the expression "metric tons," shall be understood to mean the ton of 2,240 pounds (1,016 kilo.).

Vessels now completed shall retain their present ratings of displacement tonnage in accordance with their national system of measurement. However, a Power expressing displacement in metric tons shall be considered for the application of the present Treaty as owning only the equivalent displacement in tons of 2,240 pounds.

A vessel completed hereafter shall be rated at its displacement tonnage when in the standard condition defined herein.

Official Secrets Act, 1923.

(ACT XIX OF 1923.)

[Passed on the 2nd April, 1923.]

An Act to consolidate and amend the law in British India relating to official secrets.

WHEREAS the Law in British India relating to official secrets is at XV of 1889, present contained in two Acts of the Governor-General in Council, namely, V of 1904, the Indian Officials Secrets Act, 1889, and the Indian Official Secrets ^{1 & 2 Geo.} (Amendment) Act, 1904, and one Statute of Parliament namely, the ^{V, c. 28.} Official Secrets Act, 1911; and

WHEREAS the Official Secrets Act, 1911, has been amended by the ^{1 & 2 Geo.} Official Secrets Act, 1920, which Statute applies to the United Kingdom ^{V, c. 28.} and to certain British possessions, but not to British India; and ^{10 & 11 Geo.} ^{V, c. 75.}

WHEREAS it is expedient that the law relating to official secrets in British India should be consolidated and amended;

It is hereby enacted as follows:—

Short title, extent and application. 1. (1) This Act may be called the Indian Official Secrets Act, 1923.

(2) It extends to the whole of British India, and applies also —

(a) to all subjects of His Majesty and servants of the Crown within the dominions of Princes and States in India in alliance with His Majesty; and

(b) to all Indian subjects of His Majesty without and beyond British India.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) any reference to a place belonging to His Majesty includes a place occupied by any department of the Government, whether the place is or is not actually vested in His Majesty;

(2) expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect or description thereof only be communicated or received; expressions referring to obtaining or retaining any sketch, plan, model, article, note or document include the copying or causing to be copied of the whole or any part of any sketch, plan, model, article, note, or document; and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note or document;

(3) "document" includes part of a document;

(4) "model" includes design, pattern and specimen;

(5) "munitions of war" includes the whole or any part of any ship, submarine, aircraft, tank or similar engine, arms and ammunition, torpedo, or mine intended or adapted for use in war, and any other article, material, or device, whether actual or proposed, intended for such use;

(6) "Office under His Majesty" includes any office or employment in or under any department of the Government or of the Government of the United Kingdom or of any British possession;

(7) "photograph" includes an undeveloped film or plate;

(8) "prohibited place" means—

(a) any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, camp, ship or aircraft belonging to, or occupied by or on behalf of, His Majesty, any military telegraph or telephone so belonging or occupied, any wireless or signal station or office so belonging or occupied and any factory, dockyard or other place so belonging or occupied and used for the purpose of building, repairing, making or storing any munitions of war, or any sketches, plans, models or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war;

(b) any place not belonging to His Majesty where any munitions of war or any sketches, models, plans or documents relating thereto, are being made, repaired, gotten or stored under contract with, or with any person on behalf of, His Majesty, or otherwise on behalf of His Majesty;

(c) any place belonging to or used for the purpose of His Majesty which is for the time being declared by the Governor-General in Council, by notification in the Gazette of India, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or damage thereto, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality;

(d) any railway, road, way or channel, or other means of communication by land or water (including any works or structures being part thereof or connected therewith) or any place used for gas, water or electricity, works or other works for purposes of a public character, or any place where any munitions of war or any sketches, models, plans, or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of His Majesty, which is for the time being declared by the Governor-General in Council, by notification in the Gazette of India to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality;

(9) "sketch" includes any photograph or other mode of representing any place or thing; and

(10) "Superintendent of Police" includes any Police officer of a like or superior rank, and any person upon whom the powers of a Superintendent of Police are for the purposes of this Act conferred by the Governor-General in Council or by any Local Government.

3. (1) If any person for any purpose prejudicial to the safety or interests of the State—

(a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or

(b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy or

(c) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy;

he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft, or otherwise in relation to the naval, military or air force affairs of His Majesty or in relation to any secret official code, to fourteen years and in other cases to three years.

(2) On a prosecution for an offence punishable under this section with imprisonment for a term which may extend to fourteen years it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or is known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or

his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State such sketch, plan, model, article, note, document or information shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State.

4. (1) In any proceedings against a person for an offence under section 3, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without British India, shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information which is calculated to be or might be, or is intended to be, directly or indirectly, useful to an enemy.

(2) For the purpose of this section, but without prejudice to the generality of the foregoing provisions,—

(a) a person may be presumed to have been in communication with a foreign agent if—

(i) he has, either within or without British India, visited the address of a foreign agent or consorted or associated with a foreign agent, or

(ii) either within or without British India, the name or address of, or any other information regarding, a foreign agent has been found in his possession, or has been obtained by him from any other person ;

(b) the expression " foreign agent " includes any person who is or has been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power, either directly or indirectly, for the purpose of committing an act, either within or without British India, prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without British India, committed, or attempted to commit, such an act in the interests of a foreign power ;

(c) any address, whether within or without British India, in respect of which it appears that there are reasonable grounds for suspecting it of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, may be presumed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent.

5. (1) If any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to

him by any person holding office under His Majesty, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under His Majesty, or as a person who holds or has held a contract made on behalf of His Majesty, or as a person who is or has been employed under a person who holds or has held such an office or contract—

(a) wilfully communicates the code or pass word sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorized to communicate it, or a Court of Justice or a person to whom it is, in the interests of the State, his duty to communicate it; or

(b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State; or

(c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code or pass word or information; he shall be guilty of an offence under this section.

(2) If any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, pass word, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section.

(3) If any person having in his possession or control any sketch, plan, model, article, note, document or information, which relates to munitions of war, communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State, he shall be guilty of an offence under this section.

(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Unauthorised use of uniforms; falsification of reports, forgery, personation and false documents.

6. (1) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the State—

(a) uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or

(b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(c) forges, alters, or tampers with any passport or any naval, military, air force, police, or official pass, permit, certificate, license, or other document of a similar character (hereinafter in this section referred to as an official document), or knowingly uses or has in his possession any such forged, altered, or irregular official document ; or

(d) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding, office under His Majesty, or to be or not to be a person to whom an official document or secret official code or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code or pass word, whether for himself or any other person, knowingly makes any false statement ; or

(e) uses, or has in his possession or under his control, without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to, or used, made or provided by, any department of the Government, or by any diplomatic, naval, military, or air force authority appointed by or acting under the authority of His Majesty, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or knowingly uses, or has in his possession or under his control, any such counterfeited die, seal or stamp ;

he shall be guilty of an offence under this section.

(2) If any person for any purpose prejudicial to the safety of the State—

(a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof ; or

(b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code or pass word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code or pass word issued for the use of some person other than himself, or, on obtaining possession of any official document by finding or otherwise, wilfully fails to restore it to the person or authority by whom or for whose use it was issued, or to a police officer ; or

(c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale, any such die, seal or stamp as aforesaid ; he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may be extended to two years, or with fine, or with both.

(4) The provisions of sub-section (2) of section 3 shall apply, for the purpose of proving a purpose prejudicial to the safety of the State, to any prosecution for an offence under this section relating to the naval, military or air force affairs of His Majesty, or to any secret official code in like manner as they apply, for the purpose of proving a purpose prejudicial to the safety or interests of the State to prosecutions for offences punishable under that section with imprisonment for a term which may extend to fourteen years.

7. (1) No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, any police officer, or any member of His Majesty's forces engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place.

Interfering with officers of the police or members of His Majesty's forces.

(2) If any person acts in contravention of the provisions of this section, he shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

8. (1) It shall be the duty of every person to give on demand to a Superintendent of Police, or other police officer not below the rank of Inspector, empowered by an Inspector-General or Commissioner of Police in this behalf, or to any member of His Majesty's forces engaged on guard, sentry, patrol or other similar duty, any information in his power relating to an offence or suspected offence under section 3 or under section 3 read with section 9 and, if so required, and upon tender of his reasonable expenses, to attend at such reasonable time and place as may be specified for the purpose of furnishing such information.

Duty of giving information as to commission of offences.

(2) If any person fails to give any such information or to attend as aforesaid, he shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

9. Any person who attempts to commit or abets the commission of an offence under this Act shall be punishable with the same punishment, and be liable to be proceeded against in the same manner as if he had committed such offence.

Attempts, incitements, etc.

10. (1) If any person knowingly harbours any person whom he knows or has reasonable grounds for supposing to be a person who is about to commit or who has committed an offence under section 3 or under section 3 read with section 9 or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, he shall be guilty of an offence under this section.

Penalty for harbouring spies.

(2) It shall be the duty of every person having harboured any such person as aforesaid, or permitted to meet or assemble in any premises in his occupation or under his control any such persons as aforesaid, to give on demand to a Superintendent of Police or other police officer not below the rank of Inspector empowered by an Inspector-General or Commissioner of Police in this behalf, any information in his power relating to any such person or persons, and if any person fails to give any such information, he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

11. (1) If Presidency Magistrate, Magistrate of the first class or Sub-Divisional Magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search-warrant authorizing any police officer named therein,

not being below the rank of an officer in charge of a police station, to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note or document, or anything of a like nature, or anything which is evidence of an offence under this Act having been or being about to be committed which he may find on the premises or place or any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

(2) Where it appears to a police officer, not being below the rank of Superintendent, that the case is one of great emergency, and that in the interests of the State immediate action is necessary, he may by a written order under his hand give to any police officer the like authority as may be given by the warrant of a Magistrate under the section.

(3) Where action has been taken by a police officer under sub-section (2) he shall, as soon as may be, report such action, in a Presidency town to the Chief Presidency Magistrate, and outside such town to the District or Sub-Divisional Magistrate.

V of 1898.

Power to arrest.

12. Notwithstanding anything in the Code of Criminal Procedure, 1898—

(a) an offence punishable under section 3 or under section 3 read with section 9 with imprisonment for a term which may extend to fourteen years shall be a cognizable and non-bailable offence;

(b) an offence under clause (a) of sub-section (1) of section 6 shall be a cognizable and bailable offence; and

(c) every other offence under this Act shall be a non-cognizable and bailable offence, in respect of which a warrant of arrest shall ordinarily issue in the first instance.

13. (1) No court (other than that of a Magistrate of the first class specially empowered in this behalf by the Local Government) which is inferior to that of a District or Presidency Magistrate shall try any offence under this Act.

Restriction on trial of offences.

(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed claims to be tried by the Court of Session, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that Court, notwithstanding that it is not a case exclusively triable by that Court.

(3) No Court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the Governor-General in Council, the Local Government, or some officer empowered by the Governor-General in Council in this behalf:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that such complaint has not been made, but no further or other proceedings shall be taken until such complaint has been made.

(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in British India in which the offender may be found.

14. (1) In addition and without prejudice to any powers which a court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a court against any person for an offence under this Act or the proceedings on appeal, or in the course of the trial of a person under this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the State, that all or any portion of the public shall be excluded during any part of the hearing, the Court may make an order to that effect, but the passing of sentence shall in any case take place in public.

15. Where the person guilty of an offence under this Act is a company or corporation, every director and officer of the company or corporation with whose knowledge and consent the offence was committed shall be guilty of the like offence.

16. The Indian Official Secrets Act, 1889, and XV of 1889. the Indian Official Secrets (Amendment) Act, 1904, are V of 1904. hereby repealed.

Passport Act, 1920.

(ACT XXXIV OF 1920).

[Passed on the 9th September, 1920].

An Act to take power to require passports of persons entering British India.

WHEREAS it is expedient to take power to require passports of persons entering British India; It is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may be called the Indian Passport Act, 1920.

(2) It shall extend to the whole of British India, including British Baluchistan, the Sonthal Parganas and the district of Angul.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

“entry” means entry by water, land or air;

“passport” means a passport for the time being in force issued or renewed by the prescribed authority and satisfying the conditions prescribed relating to the class of passports to which it belongs; and

“prescribed” means prescribed by rules made under this Act.

3. (1) The Governor-General in Council may make rules requiring that persons entering British India shall be in possession of passports, and for all matters ancillary or incidental to that purpose.

(2) Without prejudice to the generality of the foregoing power such rules may—

(a) prohibit the entry into British India or any part thereof of any person who has not in his possession a passport issued to him ;

(b) prescribe the authorities by whom passports must have been issued or renewed, and the conditions with which they must comply, for the purposes of this Act ; and

(c) provide for the exemption, either absolutely or on any condition, of any person or class of persons from any provision of such rules.

(3) Rules made under this section may provide that any contravention thereof or of any order issued under the authority of any such rule shall be punishable with imprisonment for a term which may extend to three months, or with fine or with both.

(4) All rules made under this section shall be published in the Gazette of India, and shall thereupon have effect as if enacted in this Act.

4. (1) Any officer of police, not below the rank of a sub-inspector, and any officer of the Customs Department empowered by a general or special order of the Local Government in this behalf may arrest without warrant any person who has contravened or against whom a reasonable suspicion exists that he has contravened any rule or order made under section 3.

(2) Every officer making an arrest under this section shall without unnecessary delay take or send the person arrested before a Magistrate having jurisdiction in the case or to the officer in charge of the nearest police-station and the provisions of section 61 of the Code of Criminal Procedure, 1898, shall, so far as may be, apply in the case of any such arrest.

V of 1898.

5. The Local Government may, by general or special order, direct the removal of any person from British India who, in contravention of any rule made under section 3 prohibiting entry into British India without passport, has entered therein, and thereupon any officer of Government shall have all reasonable powers necessary to enforce such direction.

Police (Incitement to Disaffection) Act, 1922.

(ACT XXII OF 1922.)

[Passed on the 5th October, 1922.]

An Act to provide a penalty for spreading disaffection among the police and for kindred offences.

WHEREAS it is expedient to penalize the spreading of disaffection among the police and other kindred offences ; It is hereby enacted as follows :—

Short title, extent and commencement. 1. (1) This Act may be called the Police (Incitement to Disaffection) Act, 1922.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) It shall come into force in any province or part of a province on such date as the Local Government may, by notification in the local official Gazette, direct.

2. In this Act, the expression "member of a police-force" means any person appointed or enrolled for the performance of police duties under any enactment specified in the Schedule.

Penalty for causing disaffection, etc.

3. Whoever intentionally causes or attempts to cause, or does any act which he knows is likely to cause, disaffection towards His Majesty or the Government established by law in British India amongst the members of a police-force, or induces or attempts, to induce, or does any act which he knows is likely to induce, any member of a police-force to withhold his services or to commit a breach of discipline shall be punished with imprisonment which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Explanation—Expressions of disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, or of disapprobation of the administrative or other action of the Government, do not constitute an offence under this section unless they cause or are made for the purpose of causing or are likely to cause disaffection.

Saving of acts done by police associations and other persons for certain purposes.

4. Nothing shall be deemed to be an offence under this Act which is done in good faith—

(a) for the purpose of promoting the welfare or interests of any member of a police-force by inducing him to withhold his services in any manner authorized by law; or

(b) by or on behalf of any association formed for the purpose of furthering the interests of members of a police-force as such, where the association has been authorized or recognized by the Government and the act done is done under any rules or articles of the association which have been approved by the Government.

Sanction to trial of offences by subordinate Courts.

5. No Court shall proceed to the trial of any offence under this Act except with the previous sanction, or on the complaint, of the District Magistrate, or, in the case of a Presidency town or the town of Rangoon, of the Commissioner of Police.

Trial of cases.

6. (1) No Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try any offence under this Act.

(2) Notwithstanding anything contained in Chapter XXII of the Code of Criminal Procedure, 1898, no offence under this Act shall be triable summarily.

THE SCHEDULE.

(See section 2.)'

Year.	Number.	Short title.
		<i>Acts of the Governor-General in Council.</i>
1859	XXIV	The Madras District Police Act, 1859.
1861	V	The Police Act, 1861.
1887	XV	The Burma Military Police Act, 1887.
1888	III	The Police Act, 1888.
1892	V	The Bengal Military Police Act, 1892.
		<i>Madras Act.</i>
1888	III	The Madras City Police Act, 1888.
		<i>Bombay Acts.</i>
1890	IV	The Bombay District Police Act, 1890.
1902	IV	The City of Bombay Police Act, 1902.
		<i>Bengal Acts.</i>
1866	II	The Calcutta Suburban Police Act, 1866.
1866	IV	The Calcutta Police Act, 1866.
1890	III	The Calcutta Port Act, 1890.
1920	II	The Eastern Frontier Rifles (Bengal Battalion) Act, 1920.
		<i>Burma Act.</i>
1899	IV	The Rangoon Police Act, 1899.
		<i>Assam Act</i>
1920	I	The Assam Rifles Act, 1920.
		<i>Regulation by the Governor-General in Council.</i>
1888	II	The Andaman and Nicobar Islands Military Police Regulation, 1888.

Ports Act, 1908.

(ACT XV OF 1908.)

[Amended by Acts XV of 1922; XXXIX of 1923.]

S. 6.—[Amended by Act XV of 1922.]

2. In section 6 of the Indian Ports Act of 1908,—

(a) after sub-section (1), the following sub-section shall be inserted, namely .—

“(1-A) In addition to any rules which it is empowered to make under sub-section (1), the Local Government shall make rules prohibiting the employment at piers, jetties, landing-places, wharves, quays, docks, warehouses and sheds of children under the age of twelve years upon the handling of goods”; and

(b) in sub-section (2) after the word and figure “sub-section (1)” the words and figure “and sub-section (1-A)” shall be inserted.

S. 6 —[Amended by Act XXXIX of 1923.]

2. In sub-section (1) of section 6 of the Indian Ports Act, 1908 (hereinafter referred to as the said Act), after clause (e) the following clause shall be inserted, namely :—

“(ee) for regulating the manner in which oil or water mixed with oil shall be discharged in any such port and for the disposal of the same”.

S. 21.—[Amended by Act XXXIX of 1923.]

3. In section 21 of the said Act—

(a) to sub-section (1) after the word "landfloods" the following shall be added, namely :—

"and no oil or water mixed with oil shall be discharged in or into any such port, to which any rules made under clause (ee) of sub-section (1) of section 6, apply, otherwise than in accordance with such rules".

(b) in sub-section (2)—

(i) after the words "such other thing" the words "or so discharges any oil or water mixed with oil" shall be inserted, and

(ii) for the words "or thrown" the words "thrown or discharge" shall be substituted; and

(c) in sub-section (3)—

(i) after the words "such other thing" the words "or from so discharging any oil or water mixed with oil" shall be inserted, and

(ii) for the words "or throw it" the words "throw or discharge the same" shall be substituted; and

(d) in sub-section (4), after the words "thrown into" the words "or the oil or water mixed with oil is discharged in or into" shall be inserted.

Post Office Act, 1898.

(ACT VI OF 1898).

[Amended by Acts XV of 1921; XIV of 1922 and XVI of 1924.]

S. 17.—[Amended by Act XVI of 1924.]

2. Section 17 of the Indian Post Office Act, 1898 (hereinafter referred to as the said Act) shall be re-numbered as sub-section (1) of section 17, and to that section as re-numbered the following sub-section shall be added, namely :—

"(2) Where the Governor-General in Council has directed that prepayment of postage or other sums chargeable under this Act in respect of postal articles may be made by prepaying the value devoted by the impressions of stamping machines issued under his authority, the impression of any such machine shall likewise be deemed to be a stamp issued by Government for the purpose of revenue within the meaning of the Indian Penal Code."

S. 24.—[Amended by Act XV of 1921.]

2. In section 24 of the Indian Post Office Act, 1898 (hereinafter referred to as the said Act), the third proviso shall be omitted.

S. 24-A.—[*Newly inserted by Act XV of 1921.*]

3. After section 24 of the said Act, the following section shall be inserted, namely:—

"24-A. The Governor-General in Council may, by general or special order, empower any officer of the Post Office, specified in such order, to deliver any postal article, received from beyond the limits of British India and suspected to contain anything liable to duty, to such Customs authority as may be specified in the said order, and such Customs authority shall deal with such article in accordance with the provisions of the Sea Customs Act, 1878, or of any other law for the time being in force."

S. 27.—[*Amended by Act XVI of 1924.*]

3. To the *Explanation* to section 27 of the said Act, the following shall be added, namely:—"and the impression of any stamping machine provided or authorised for the like purpose by or under the authority of the Government of such part, state or country".

Ss. 27-A—27-D.—[*Newly added by Act XIV of 1922.*]

For the text of the section, 27-A to 27-D, see Fourth Schedule to the Press Law Repeal and Amendment Act XIV of 1922, at p. 348, *infra*.

S. 67.—[*Amended by Act XV of 1921.*]

4. In section 67 of the said Act, after the words "this Act" the words "or of any other Act for the time being in force" shall be inserted.

Press and Registration of Books Act, 1867.

(ACT XXV OF 1867.)

[*Amended by Acts XIV of 1922 and XI of 1923.*]

Ss. 1, 5, 7, 8-A, 11-A, 12, 13, 14, 15, 16-A.—[*Amended and new sections inserted by Act XIV of 1922.*]

For the amendments in Ss. 1, 5, 7, 12, 13, 14 and 15, and for the insertion of the new sections, 8-A, 11-A and 16-A, see the first schedule to the Press Law Repeal and Amendment Act, XIV of 1922, at p. 344, *infra*.

S. 17.—[*Amended by Act XI of 1923.*]

In section 17, for the words "the last foregoing section" the word and figures "section 16" shall be substituted.

S. 21.—[*Amended by Act XI of 1923.*]

In section 21, before the words "the Local Government" the words "the Governor-General in Council or" and before the words "the Local Gazette" the words "the Gazette of India or" shall be inserted and after the words "Local Gazette" the words "as the case may be" shall be inserted.

Press Law Repeal and Amendment Act, 1922.

(ACT XIV OF 1922.)

[Passed on the 19th March, 1922.]

An Act to repeal the Indian Press Act, 1910, and the Newspapers (Incitements to Offences) Act, 1908, and to make certain provisions in regard to the liability of editors of newspapers, and to facilitate the registration of printers and publishers ; and to provide for the seizure and disposal of certain documents.

WHEREAS it is expedient to repeal the Indian Press Act, 1910, and I of 1910. the Newspapers (Incitements to Offences) Act, 1908, and to make VII of 1908. further provision in the Press and Registration of Books Act, 1867, for XXV of 1867. the liability of editors of newspapers in civil and criminal proceedings, and to make certain amendments in that Act in order to facilitate the registration of printers and publishers ; and to provide in the Sea Customs Act, 1878, the Code of Criminal Procedure, 1898, and the Indian Post VIII of 1878. Office Act, 1898, for the seizure and disposal of certain documents ; It is VI of 1898. hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called the Press Law Repeal and Amendment Act, 1922.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

Repeal of Act VII of 1908 and Act I of 1910.

2. (1) The Newspapers (Incitements to Offences) Act, 1908, and the Indian Press Act, 1910, are VII of 1908. I of 1910. hereby repealed.

(2) Nothing in sub-section (1) shall be deemed to invalidate any order made under section 12 of the Indian Press Act, 1910, before I of 1910. the commencement of this Act, forfeiting any newspaper, book or other document ; and any newspaper, book or other documents forfeited in accordance with such order shall be deemed to be forfeited in accordance with the provisions of section 99-A of the Code of Criminal Procedure, 1898, except that no application under section 99-B V of 1898. of that Code shall lie in respect of the forfeiture of any such newspaper, book or document, if forfeited more than two months before the commencement of this Act.

Amendment of Act XXV of 1867.

3. The amendments set forth in the First Schedule shall be made in the Press and Registration of Books Act, 1867.

Amendment of Act VIII of 1878.

4. The amendments set forth in the Second Schedule shall be made in the Sea Customs Act, 1878.

Amendment of Act V of 1898.

5. The amendments set forth in the Third Schedule shall be made in the Code of Criminal Procedure, 1898.

Amendment of Act VI of 1898.

6. The amendments set forth in the Fourth Schedule shall be made in the Indian Post Office Act, 1898.

THE FIRST SCHEDULE.

(See section 3.)

THE PRESS AND REGISTRATION OF BOOKS ACT, 1867
(XXV OF 1867.)

1. In section 1, after the definition of "British India," the following definition, namely:—

Editor. " 'editor' means the person who controls the selection of the matter that is published in a newspaper," and after the definition of 'Magistrate' the following definition, namely:—

Newspaper. " 'newspaper' means any printed periodical work containing public news or comments on public news," shall be inserted.

2. In section 5—

(a) For the words "printed periodical work containing public news or comments on public news," the word "newspaper" shall be substituted;

(b) After the words "hereinafter laid down" the following clause shall be inserted, namely:—

"(1) Every copy of every such newspaper shall contain the name of the person who is the editor thereof printed clearly on such copy as the name of the editor of that newspaper;"

(c) Clauses (1), (2) and (3) shall be re-numbered (2), (3) and (4);

(d) In clause (2) as re-numbered, for the words "before the Magistrate within whose local jurisdiction such work shall be punished" the words "in person or by agent authorised in this behalf in accordance with rules made under section 20, before a District, Presidency or Sub-Divisional Magistrate within whose local jurisdiction such newspaper shall be printed or published, or such printer or publisher resides", shall be substituted, and for the words "periodical work" the word "newspaper" shall be substituted;

(e) After clause (4) as re-numbered, the following proviso shall be inserted, namely:

"Provided that no person who has not attained majority in accordance with the provisions of the Indian Majority Act, 1875, or of the law to which he is subject in respect of the attainment of majority, shall be permitted to make the declaration prescribed by this section, nor shall any such person edit a newspaper."

IX of 1876.

3. In section 7—

(a) After the words "custody of such declarations," the words "or, in the case of the editor, a copy of the newspaper containing his name printed on it as that of the editor";

(b) After the words "to such declaration," the words "or printed on such newspaper, as the case may be";

(c) After the words "in the declaration," the words "or the editor of every portion of that issue of the newspaper of which a copy is produced,"

shall be inserted.

4. In sections 7, 8 and 9, for the words "periodical work" wherever they occur, the word "newspaper" shall be substituted

5. After section 8, the following section shall be inserted, namely:—

"8-A. If any person, whose name as appeared as editor on a copy of a newspaper, claims that he was not the editor of the issue on which his name as so appeared, he may, within two weeks of his becoming aware that his name has been so published, appear before a District, Presidency or Sub-Divisional Magistrate and make a declaration that his name was incorrectly published in that issue as that of the editor thereof, and if the Magistrate after making such inquiry or causing such inquiry to be made as he may consider necessary is satisfied that such declaration is true, he shall certify accordingly, and on that certificate being given the provisions of section 7 shall not apply to that person in respect of that issue of the newspaper.

The Magistrate may extend the period allowed by this section in any case where he is satisfied that such person was prevented by sufficient cause from appearing and making the declaration within that period."

6. After section 11, the following section shall be inserted, namely:—

"11-A. The printer of every newspaper in British India shall deliver at such place and to such officer as the Local Government may, by notification in the local official Gazette, direct, and free of expense to the Government, two copies of each issue of such newspaper as soon as it is published."

7. In sections 12, 13, 14 and 15, for the words "two years," wherever they occur, the words "six months," and for the words "five thousand" wherever they occur, the words "two thousand" shall be substituted.

8. In section 15—

(a) After the words "whoever shall" in the two places where they occur, the word "edit" shall be inserted;

(b) For the words "such periodical work as is hereinbefore described," the word "newspaper" shall be substituted;

(c) After the words "shall cause to be," the word "edited" shall be inserted;

(d) For the words "such periodical work," where they occur for the second time, the word "newspaper" shall be substituted; and

(e) For the words "that work," the words "that newspaper" shall be substituted.

9. After section 16, the following section shall be inserted, namely :—

“ 16-A. If any printer of any newspaper published in British India neglects to deliver copies of the same in compliance with section 11-A, he shall, on the complaint of the officer to whom copies should have been delivered or of any person authorised by that officer in this behalf, be punishable, on conviction by a Magistrate having jurisdiction in the place where the newspaper was printed, with fine which may extend to fifty rupees for every default.”

Penalty for failure to supply copies of newspapers gratis to Government.

THE SECOND SCHEDULE.

(See section 4.)

THE SEA CUSTOMS ACT, 1878 (VIII OF 1878).

After section 181, the following sections shall be inserted, namely :—

“ 181-A. (1) The Chief Customs-officer or other officer authorised by the Local Government in this behalf may detain any package, brought whether by land or sea into British India which he suspects to contain—

Power to detain packages containing certain publications imported into British India.

(a) any newspaper or book as defined in the Press and Registration of Books Act, 1867, or

(b) any document, containing any seditious matter, that is to say, any matter the publication of which is punishable under section 124-A of the Indian Penal Code, and shall forward such package to such officer as the Local Government may appoint in this behalf.

(2) Any officer detaining a package under the provisions of subsection (1) shall, where practicable, forthwith send by post to the addressee or consignee of such package notice of the fact of such detention.

(3) The Local Government shall cause the contents of such package to be examined, and if it appears to the Local Government that the package contains any such newspaper, book or other document containing any such seditious matter, may pass such orders as to the disposal of the package and its contents as it may deem proper, and, if it does not so appear, shall release the package and its contents unless the same be otherwise liable to seizure under any law for the time being in force :

Provided that any person interested in any package detained under the provisions of this section may, within two months from the date of such detention, apply to the Local Government for release of the same, and the Local Government shall consider such application and pass such orders thereon as it may deem to be proper :

Provided, further, that, if such application is rejected, the applicant may, within two months from the date of the order rejecting the application, apply to the High Court for release of the package or its contents on the ground that the package did not contain any such newspaper, book or other document containing any such seditious matter.

(4) In this section “document ” includes also any painting, drawing or photograph, or other visible representation.

181-B. Every application under the second proviso to sub-section (3) of section 181-A shall be heard and determined, in the manner provided by sections 99-D to 99-F of the Code of Criminal Procedure, 1898, by a V of 1898. Special Bench of the High Court constituted in the manner provided by section 99-C of that Code.

Procedure for disposal by High Court of applications for release of packages so detained.

181-C. No order passed or action taken under section 181-A shall be called in question in any Court otherwise than in accordance with the second proviso to sub-section (3) of that section."

Jurisdiction barred.

THE THIRD SCHEDULE.

(See section 5.)

THE CODE OF CRIMINAL PROCEDURE, 1898 (V OF 1898).

1. After section 99, the following sections shall be inserted, namely:—

Power to declare certain publications forfeited, and to issue search warrants for the same.

"99 A. (1) Where—

(a) any newspaper, or book as defined in the Press and Registration of Books Act, 1867, or XXV of 1867.

(b) any document, wherever printed, appears to the Local Government to contain any seditious matter, that is to say, any matter the publication of which is punishable under section 124-A of the Indian Penal Code, the Local Government may, by notification in the local official Gazette, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to His Majesty, and thereupon any police-officer may seize the same, wherever found in British India, and any Magistrate may by warrant authorise any police-officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be. XLV of 1860.

(2) In sub-section (1) "document" includes also any painting, drawing or photograph, or other visible representation.

99-B. Any person having any interest in any newspaper, book or other document, in respect of which an order of forfeiture has been made under section 99-A, may, within two months from the date of such order, apply to the High Court to set aside such order on the ground that the issue of the newspaper, or the book or other document, in respect of which the order was made, did not contain any seditious matter.

Application to High Court to set aside order of forfeiture.

99-C. Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges.

Hearing by Special Bench.

99-D. (1) On receipt of the application, the Special Bench shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained seditious matter of the nature referred to in sub-section (1) of section 99-A, set aside the order of forfeiture.

Order of Special Bench setting aside forfeiture.

(2) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

99-E. On the hearing of any such application with reference to any newspaper, in any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, which are alleged to be seditious matter.

Evidence to prove nature or tendency of newspapers.

99-F. Every High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of costs thereof and the execution of orders passed thereon, and until such rules are framed, the practice of such Courts in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.

Procedure in High Court.

99-G. No order passed or action taken under section 99-A shall be called in question in any Court otherwise than in accordance with the provisions of section 99-B."

Jurisdiction barred.

2. In section 101 after the words " section 98," the words " section 99-A" shall be inserted.

THE FOURTH SCHEDULE.

(See section 6.)

THE INDIAN POST OFFICE ACT, 1898 (VI OF 1898).

After section 27, the following sections shall be inserted, namely :—

Prohibition of transmission by post of certain newspapers of 1867.

" 27-A. No newspaper printed and published in British India, without conforming to the rules laid down in the Press and Registration of Books Act, 1867, shall be transmitted by post.

Power to detain newspapers and other articles being transmitted by post.

27-B. (1) Any officer of the Post Office authorised by the Postmaster-General in this behalf may detain any postal article in course of transmission by post which he suspects to contain—

(a) (i) any newspaper or book as defined in the Press and Registration of Books Act, 1867; or

(ii) any document;

containing any seditious matter, that is to say, any matter the publication of which is punishable under section 124-A of the Indian Penal Code; or

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(b) any newspaper as defined in the Press and Registration of Books Act, 1867, edited, printed or published otherwise XXV of 1867, than in conformity with the rules laid down in that Act; and shall deliver any postal article so detained to such officer as the Local Government may appoint in this behalf.

(2) Any officer detaining any postal article under the provisions of sub-section (1) shall forthwith send by post to the addressee of such article notice of the fact of such detention.

(3) The Local Government shall cause the contents of any postal article detained under sub-section (1) to be examined, and, if it appears to the Local Government that the article contained any newspaper, book or other document, of the nature described, clause (a) or clause (b) of sub-section (1), may pass such orders as to the disposal of the article and its contents as it may deem proper, and, if it does not so appear, shall release the article and its contents, unless the same be otherwise liable to seizure under any law for the time being in force:

Provided that any person interested in any article detained under the provisions of clause (a) of sub-section (1) may, within two months from the date of such detention, apply to the Local Government for release of the same, and the Local Government shall consider such application and pass such orders thereon as it may deem to be proper:

Provided also that, if such application is rejected, the applicant may, within two months from the date of the order rejecting the application, apply to the High Court for release of the article and its contents on the ground that the article did not contain any newspaper, book or other document containing any seditious matter.

(4) In this section "document" includes also any painting, drawing or photograph, or other visible representation.

27-C. Every application made under the second proviso to sub-section (3) of section 27-B shall be heard and determined in the manner provided by sections 99-D to 99-F of the Code of Criminal Procedure, 1898, by a Special Bench of the High Court constituted in the manner provided by section 99-C of that Code. v of 1898;

Procedure for disposal by High Court of applications for release of newspapers and articles so detained.

27-D. No order passed or action taken under section 27-B shall be called in question in any Court otherwise than in accordance with the second proviso to sub-section (3) of that section.

Jurisdiction barred.

Prisoners (Amendment) Act, 1923.

(ACT XVII OF 1923.)

[Passed on the 16th March, 1923.]

An Act to amend section 29 of the Prisoners Act, 1900.

WHEREAS it is expedient to amend section 29 of the Prisoners Act, 1900; It is hereby enacted as follows:—

1. This Act may be called the Prisoners (Amendment) Act, 1923.

Short title.

2. In section 29 of the Prisoners Act, 1900,—

(a) to sub-section (1) after the words "British India" the words "or to any prison in Berar" shall be added; and

(b) to sub-section (2) the following words shall be added, namely:—

"or, in the case of a prisoner so confined in a prison in the Central Provinces, for his removal to any other prison in the Province or to any prison in Berar".

Railways Act, 1890.

(ACT IX OF 1890).

[Amended by the Repealing and Amending Act XI of 1923.]

S. 59 (5)—In sub-section (5) of section 59, for the words and figures "a person enrolled as a volunteer under the Indian Volunteers Act, 1869" the words and figures "a member of the Indian Territorial Force or of the Auxiliary Force, India" shall be substituted.

Rifles Act, 1920.

(ACT XXIII OF 1920.)

[Passed on the 31st August, 1920.]

An Act to provide for the better discipline of Police-officers enrolled in Military Police or Rifle Battalions.

WHEREAS it is expedient to provide for the better discipline of Police-officers enrolled under local Acts in Military Police or Rifle Battalions; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Indian Rifles Act, 1920.

Police-officers subject to discipline and penalties prescribed in local Acts wherever serving.

2. All Police-officers enrolled under the provisions of any local Military Police or Rifles Act shall be subject to the discipline and penalties prescribed by such Act, wherever serving in India.

Savings Banks (Government) (Amendment) Act, 1923.

(ACT XVI OF 1923).

[Passed on the 16th March, 1923.]

An Act further to amend the Government Savings Banks Act, 1873.

WHEREAS it is expedient further to amend the Government Savings Banks Act, 1873; It is hereby enacted as follows:—

V of 1873.

Short title.

1. This Act may be called the Government Savings Banks (Amendment) Act, 1923.

Amendment of
section 3, Act V of
1873.

2. In section 3 of the Government Savings Banks Act, 1873 (hereinafter referred to as the said Act), for the definition of "Secretary" the following shall be substituted, namely :—

" 'Secretary' means, in the case of a Post Office Savings Bank, the Postmaster-General appointed for the area in which the Savings Bank is situate."

Substitution of
new section for sec-
tion 4, Act V of
1873.

3. For section 4 of the said Act the following section shall be substituted, namely :—

" 4. If a depositor dies and probate of his will or letters of administration of his estate or a certificate granted under the Succession Certificate Act, 1889, is not produced to the Secretary of the Government Savings Bank in which the deposit is, then—

- (a) if the deposit does not exceed three thousand rupees, the Secretary may pay the same to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, or
- (b) if the deposit does not exceed one hundred rupees, any officer employed in the management of a Government Savings Bank, who is empowered in this behalf by a general or special order of the Governor-General in Council, may, subject to any general or special orders of the Secretary in this behalf, pay the deposit to any person appearing to him to be entitled to receive it or to administer the estate."

Amendment of
sections 6 and 7, Act
V of 1873.

4. In sections 6 and 7 of the said Act, after the words "Secretary of any such Bank" the words "or any officer empowered under section 4" shall be inserted.

Sea-Customs Act, 1878.

(ACT VIII OF 1878).

[Amended by Acts XIV of 1922 and VIII of 1924.]

S. 20.—*[Amended by Act VIII of 1924.]*

In section 20 of the Sea Customs Act, 1878, the proviso shall be omitted.

Ss. 181-A, 181-B & 181-C.—*[Newly inserted by Act XIV of 1922.]*

For the text of these sections, see the second schedule to the Press Law Repeal and Amendment Act, XIV of 1922, at p. 346 *supra*.

Special Laws Repeal Act, 1922.

(ACT IV OF 1922,)

[Passed on the 22nd February, 1922.]

An Act to repeal certain special enactments supplementing the ordinary criminal law.

WHEREAS it is expedient that certain special enactments supplementing the ordinary criminal law should be repealed; It is hereby enacted as follows:—

Short title. 1. This Act may be called the Special Laws Repeal Act, 1922.

2. The repeal of any enactment by this Act shall have effect in every part of British India, including British Baluchistan, the Sonthal Parganas, the Shan States and the Hill District of Arakan, in which the enactment was in force at the date of the commencement of this Act, and any notification, made under any law for the time being in force, whereby any such enactment has been declared to be in force in, or applicable to, or has been extended to, any such part, shall on and from that date be deemed to have been cancelled in so far as it relates to that enactment.

Repeals. 3. The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof.

THE SCHEDULE.

ENACTMENTS REPEALED.

(See section 3.)

Year.	Number.	Short title.	Extent of repeal.
<i>Madras and Bengal Regulation.</i>			
1804	X	The Bengal State Offences Regulation, 1804.	So much as has not been repealed.
1808	VII	The Madras State Offences Regulation, 1808.	So much as has not been repealed.
<i>Acts of the Governor-General in Council.</i>			
1857	XI	The State Offences Act, 1857.	So much as has not been repealed.
1857	XXV	The Forfeiture Act, 1857.	So much as has not been repealed.
1872	IV	The Punjab Laws Act, 1872.	So much of the First Schedule as relates to the Bengal State Offences Regulation, 1804.
1874	XV	The Laws Local Extent Act, 1874.	So much of the First, Second, Fourth and Fifth Schedules as relates to the Bengal State Offences Regulation, 1804, the Madras State Offences Regulation, 1808, the State Offences Act, 1857, and the Forfeiture Act, 1857.
1875	XX	The Central Provinces Laws Act, 1875.	So much of the Schedule as relates to the Bengal State Offences Regulation, 1804.
1876	XVIII	The Oudh Laws Act, 1876.	So much of the Second Schedule as relates to the Bengal State Offences Regulation, 1804.

Year.	Number.	Short title.	Extent of repeal.
<i>Acts of the Governor-General in Council—(Concluded).</i>			
1891	XII	The Amending Act, 1891	So much of the Second Schedule as relates to the Forfeiture Act, 1857.
1894	XIII	The Amending (Army) Act, 1894.	So much of the Second Schedule as relates to the Madras State Offences Regulation, 1908.
1897	V	The Amending Act, 1897.	So much of the Third Schedule as relates to the Bengal State Offences Regulation, 1804.
1897	XIV	The Indian Short Titles Act, 1897.	So much of the Schedule as relates to the State Offences Act, 1857, and the Forfeiture Act, 1857.
1898	XIII	The Burma Laws Act, 1898.	So much of the First Schedule as relates to the State Offences Act, 1857, and the Forfeiture Act, 1857.
1915	IV	The Defence of India Criminal Law Amendment Act, 1915.	The whole.
1916	II	The Defence of India Amendment Act, 1916.	The whole.
1919	XI	The Anarchical and Revolutionary Crimes Act, 1919.	The whole.
<i>Regulations by the Governor-General in Council.</i>			
1872	III	The Sonthal Parganas Settlement Regulation, 1872	So much of the Schedule as relates to the Bengal State Offences Regulation, 1804.
1877	III	The Ajmere Laws Regulation, 1877.	So much of the Second Schedule as relates to the Bengal State Offences Regulation, 1804.
1895	I	The Kachin Hill-tribes Regulation, 1895.	So much of the Schedule as relates to the State Offences Act, 1857.
1896	V	The Chin Hills Regulation, 1896.	So much of the Schedule as relates to the State Offences Act, 1857.
1901	VII	The North-West Frontier Province Law and Justice Regulation, 1901.	So much of the Second Schedule as relates to the Bengal State Offences Regulation 1804.
1913	II	The British Baluchistan Laws Regulation, 1913.	So much of the First Schedule as relates to the State Offences Act, 1857.
1916	I	The Arakan Hill District Laws Regulation, 1916.	So much of the First Schedule as relates to the State Offences Act, 1857.

Territorial Force Act, 1920.

(ACT XLVIII OF 1920.)

[Passed on the 22nd September, 1920.]

[As amended by Act XXXI of 1923.]

An Act to constitute an Indian Territorial Force, and to provide for the enrolment therein of persons other than European British subjects.

WHEREAS it is expedient to provide for the constitution of an Indian Territorial Force, and for the enrolment therein of persons other than European British subjects who may offer themselves therefor; it is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called the Indian Territorial Force Act, 1920.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) It shall come into force on the first day of October, 1920.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

"Advisory Committee" means an Advisory Committee constituted under section 12 for the Province within which a person subject to this Act for the time being resides or is serving, as the case may be;

"enrolled" means enrolled or re-enrolled in the Indian Territorial Force under this Act;

✓ of 1898. "European British subject" means any person who is a European British subject as defined in the Code of Criminal Procedure, 1898, or is a British subject of European descent in the male line;

"prescribed" means prescribed by rules made under this Act; and

"University Corps" means any corps of the Indian Territorial Force constituted for the appointment thereto of students of, and other persons connected with, a University established by law in British India or colleges affiliated to such a University.

Constitution of Indian Territorial Force. 3. There shall be raised and maintained in the manner hereinafter provided a force to be designated the Indian Territorial Force:

Provided that the Governor-General in Council shall establish all or any of the branches of the Force as circumstances may permit from time to time.

Constitution and disbandment of units. 4. The Governor-General in Council may constitute for any Province one or more corps or units of the Indian Territorial Force and may disband any corps or unit so constituted.

Enrolment. 5. (1) Any British subject (not being a European British subject) or any subject of a State in India may offer himself for enrolment in the Indian Territorial Force, and any such person who satisfies the prescribed conditions may be enrolled in the prescribed manner for such period, not exceeding six years, as may be prescribed.

(2) An applicant for enrolment may apply to be enrolled for service in any particular branch, corps or unit constituted for the Province within which he for the time being resides.

Appointment to corps or unit. 6. (1) Every person enrolled shall without unnecessary delay be appointed in the prescribed manner to a corps or unit constituted under section 4 for the Province in which he for the time being resides.

(2) Any person who has been enrolled for service in any particular branch, corps or unit shall be appointed to a corps or unit of that branch or to that corps or unit, as the case may be.

Transfer and attachment. 7. (1) Any person appointed to a corps or unit under section 6 may be transferred, whether on disbandment of the corps or unit or otherwise, to another corps or unit of the Indian Territorial Force in such manner as may be prescribed.

(2) Nothing contained in sub-section (1) shall be deemed to authorise the transfer without his own consent of any person enrolled to a corps or unit constituted for a Province other than that in which he for the time being resides, or of a person enrolled for service in a particular branch to a corps or unit of another branch, or of a person enrolled for service in a particular corps or unit to any other corps or unit.

(3) Any person enrolled may be attached at his own request to any corps or unit of the Indian Territorial Force or to any regular forces.

8. Every person enrolled shall be entitled to receive his discharge from the Indian Territorial Force on the expiration of the period for which he was enrolled, and any such person may, prior to the expiration of that period, be discharged from the said Force by such authority and subject to such conditions as may be prescribed and shall be so discharged on a recommendation of the Advisory Committee in this behalf :

Provided that no person enrolled who is for the time being engaged in military service under the provisions of this Act shall be entitled to receive his discharge before the termination of such service.

9. (1) Every person enrolled shall, subject to such conditions as may be prescribed, be bound to serve in any corps or unit of the Indian Territorial Force to which he has been appointed or transferred or is for the time being attached, and shall be subject to all rules and regulations that may be made under this Act relating to such corps or unit.

(2) Every person enrolled shall be liable to perform military service—

(a) when called out with any portion of the Indian Territorial Force by an order of the senior military officer present either to act in support of the civil power or to provide guards which, in the opinion of such officer, are essential ; or

(b) when any portion of the Indian Territorial Force to which he belongs has been embodied to support or supplement His Majesty's regular forces in India in the event of an emergency by a notification directing such embodiment issued by the Governor-General in Council and published in the Gazette of India ; or

(c) when attached at his own request to any regular forces.

Territorial limits of liability to, and duration of, military service.

10. (1) No person embodied under section 9 shall be required to perform military service beyond the limits of India save under a general or special order of the Governor-General in Council.

(2) Any portion of the Indian Territorial Force which, having been called out or embodied under section 9, is performing military service shall be replaced by regular troops or otherwise as soon as circumstances permit and shall not be required to perform such service after such replacement has been effected to the satisfaction of the senior military officer in charge or after the cancellation of the order or notification under clause (a) or (b), as the case may be, of section 9.

11. (1) Every commissioned officer of the Indian Territorial Force when doing duty as a commissioned officer and every non-commissioned officer and man of the said Force—

(a) when called out or embodied for military service under section 9, or

(b) when attached to, or otherwise acting as part of or with, any regular forces,

VIII of 1911. shall be subject to the Indian Army Act, 1911, and the rules made thereunder, whereupon the said Act and rules shall apply to him as if he held the same rank in His Majesty's Indian forces as he holds for the time being in the Indian Territorial Force.

(2) Every commissioned officer, non-commissioned officer and man of the said Force when embodied for, or otherwise undergoing, military training in the prescribed manner shall be subject to the Indian Army Act, VIII of 1911, and the rules made thereunder :

Provided that the said Act and rules shall in their application to such persons be modified to such extent and in such manner as may be prescribed :

Provided further that officers, non-commissioned officers and men of a University Corps shall, when undergoing military training, be subject only to such disciplinary and other rules as may be prescribed in this behalf.

[1] (3) Where an offence punishable under the Indian Army Act, 1911, or as the case may be, under that Act as modified under sub-section (2), has been committed by any person whilst subject to that Act under the provisions of this section, such person may be taken into and kept in military custody and tried and punished for such offence under that Act, although he has ceased to be so subject as aforesaid, in like manner as he might have been taken into and kept in military custody, tried or punished, if had continued to be so subject :

Provided that no such person shall be kept in military custody, after he has ceased to belong to the Indian Territorial Force, unless he has been taken into or kept in military custody on account of the offence before the date on which he ceased so to belong ; nor shall he be kept in military custody, or be tried or punished for the offence after the expiry of two months from that date, unless his trial had already commenced before such expiry.

12. (1) The Local Government of each Province for which any unit of the Indian Territorial Force has been constituted shall constitute an Advisory Committee consisting of three members, of whom one shall be a military officer appointed in the prescribed manner and the others shall be persons who are British subjects (other than European British subjects) not in the service of Government, appointed annually by, or under the orders of the Local Government.

(2) The duties, powers and procedure of Advisory Committees shall be such as may be prescribed.

Leg. Changes :—[1] Sub-section (3) was added by Act XXXI of 1923.

Power to make rules. 13.* (1) The Governor-General in Council may, after previous publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may—

(a) prescribe the manner in which, the period for which and the conditions subject to which, persons may be enrolled under section 5 ;

(b) prescribe the manner in which persons enrolled may be appointed to corps and units under section 6 or transferred under section 7 ;

(c) prescribe the authorities by which and the conditions subject to which persons enrolled may be discharged under section 8 ;

(d) prescribe the preliminary and periodical training to be undergone by any persons or class of persons enrolled and provide for the embodiment of any corps or unit for that purpose ;

(e) prescribe the military or other obligations to which members of a University Corps shall be liable when undergoing military training and provide generally for the maintenance of discipline in such cases ;

(f) provide for the medical examination of persons offering themselves for enrolment under section 5 ;

(g) provide for and regulate the remuneration, allowances, gratuities or compensation (if any) to be paid to any person or class of persons enrolled or to their dependants ; and

(h) provide for any other matter which under this Act is to be or may be prescribed.

(3) All rules made under this Act shall be published in the Gazette of India, and on such publication shall have effect as if enacted in this Act.

Power to make regulations. 14. (1) The Commander-in-Chief of His Majesty's forces in India may make regulations consistent with this Act and the rules made thereunder providing generally for all details connected with the organization and personnel of the Indian Territorial Force and for the duties, military training, clothing, equipment, allowances and leave of persons enrolled.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may specify the courses of training or instruction to be followed by any person or class of persons enrolled.

Certain persons subject to this Act to be deemed part of His Majesty's Army for certain purposes. 15. For the purposes of sections 128, 130 and 131 of the Code of Criminal Procedure, 1898, all officers, non-commissioned officers and men of the Indian Territorial Force who have been appointed to a corps or unit shall be deemed to be officers, non-commissioned officers, and soldiers, respectively, of His Majesty's Army. of 1898.

Exemption from local taxation. 16. No person shall be liable to pay any municipal or other tax in respect of any horse, bicycle, motor bicycle, motor car, or other means of conveyance which he is authorised by regulations made under section 14 to maintain in his capacity as a member of the Indian Territorial Force.

Transfer of Ships Restriction (Repealing) Act, 1922.

(ACT XXIII OF 1922.)

[Passed on the 5th October, 1922.]

An Act to remove the restrictions imposed on the transfer of ships registered in British India.

WHEREAS it is expedient to remove the restrictions imposed on the transfer of ships registered in British India; It is hereby enacted as follows:—

Short title. 1. This Act may be called the Indian Transfer of Ships Restriction (Repealing) Act, 1922.

9 17. Repeal of Act XX 2. The Indian Transfer of Ships Restriction Act, 1917, is hereby repealed.

Workman's Breach of Contract (Amendment) Act, 1920.

(ACT XII OF 1920.)

[Passed on the 12th March, 1920.]

An Act further to amend the Workman's Breach of Contract Act, 1859.

WHEREAS it is expedient further to amend the Workman's Breach of XIII of 1859. Contract Act, 1859; It is hereby enacted as follows:—

Short title. 1. This Act may be called the Workman's Breach of Contract (Amendment) Act, 1920.

Amendment of section 1, Act XIII of 1859. 2. (1) Section 1 of the Workman's Breach of Contract Act, 1859 (hereinafter referred to as the said Act), shall be renumbered sub-section (1) of section 1.

(2) In the said sub-section—

(a) after the words "an advance of money" the words "not exceeding three hundred rupees" shall be inserted; and

(b) the words "and the Magistrate shall thereupon issue" to the end of the section shall be omitted.

(3) To the said section the following sub-sections shall be added, namely:—

"(2) The Magistrate shall at once examine the complainant on oath and may thereupon dismiss the complaint if in his opinion there is no sufficient ground for proceeding.

"(3) If in the opinion of the Magistrate there is sufficient ground for proceeding he shall issue a summons or warrant, as he may think proper, for bringing before him such artificer, workman or labourer, and shall hear and determine the case."

Substitution of
new sections for sec-
tion 18 of Act XIII of
18 5

3. (1) For section 2 of the said Act the following sections shall be substituted, namely :—

" 2. (1) If it shall be proved to the satisfaction of the Magistrate that such artificer, workman or labourer has received money in advance, not exceeding three hundred rupees, from the complainant on account of any such work, and has wilfully and without lawful or reasonable excuse neglected or refused to perform or get performed the same according to the terms of his contract, the Magistrate may in his discretion either order such artificer, workman or labourer to repay the money advanced, or such part thereof as may be just and proper, within such period and in such instalments, if any, as the Magistrate thinks fit, or order him to perform or get performed such work within such period not exceeding one year as the Magistrate may determine and otherwise according to the terms of the contract :

Order for repay-
ment of advance or
performance of con-
tract.

Provided that no such order shall be made—

(a) unless the complaint was brought within three months of the neglect or refusal or

(b) if it is proved that the complainant has on any previous occasion obtained an order under this sub-section against such artificer, workman or labourer.

Explanation—Where no time has been fixed for the performance of a contract, neglect may be presumed to have occurred on the expiry of such period as the Magistrate deems to be a reasonable time for the performance thereof.

(2) If such artificer, workman or labourer fail to comply with an order made under sub-section (1), the Magistrate may sentence him to imprisonment for a period not exceeding three months, or, if the order be for the repayment of a sum of money, for a period which may extend to three months or until repayment is made, whichever period is shorter ;

Provided that, where any instalment has been ordered, no sentence of imprisonment exceeding one month shall be passed for default in payment of any one instalment, and the aggregate of such sentences shall not exceed three months.

(3) The Magistrate may, from time to time, extend the period for repayment of money advanced or for the performance of work, as the case may be, and may vary the instalments :

Provided that no order shall be made under this sub-section extending beyond one year from the date of the order under sub-section (1) the period within which the work is to be performed.

(4) No repayment of any money or order therefor shall deprive the complainant of any civil remedy whether for the recovery of any money advanced and remaining unpaid or otherwise, which he may have otherwise than under this Act.

Inequitable con-
tracts not to be en-
forced.

2-A. The Magistrate may in his discretion refuse to make an order under section 2 where in his opinion the contract in respect of a breach of which the complaint has been made was substantially unfair.

2-B. (1) If in any proceedings under this Act the Magistrate is of opinion that the complaint was false to the knowledge of the complainant or was frivolous, or vexatious, he may in his discretion call upon the complainant forthwith to show cause why he should not pay compensation to the person complained against.

Compensation in false or frivolous or vexatious complaints.

(2) The Magistrate shall consider any cause which such complainant may show, and, if after so doing he is satisfied that the accusation was false to the knowledge of the complainant or was frivolous, or vexatious, he may, for reasons to be recorded, direct that compensation not exceeding fifty rupees be paid by the complainant to the person complained against.

(3) Compensation for the payment of which an order is made under sub-section (2) shall be recoverable as if it were a fine, and the Magistrate may, by the order directing payment of the same, further order that in default of payment the complainant shall suffer simple imprisonment for a period which may extend to thirty days or until payment is made, whichever period is shorter."

Amendment of section 3, Act XII of 1859.

4. In section 3 of the said Act for the words "to be imprisoned with hard labour" the words "to imprisonment" shall be substituted.

Substitution of new section for section 4, Act XIII of 1859.

5. For section 4 of the said Act the following section shall be substituted, namely :—

To what contracts Act extends.

IX of 1872.

"4. In this Act the word 'contract' shall extend to all contracts within the meaning of the Indian Contract Act, 1872:

Provided that nothing in this Act shall apply to contracts where, a period having been specified for performance, such period exceeds one year."

Works of Defence (Amendment) Act, 1921.

(ACT XI OF 1921.)

[Passed on the 29th September, 1921.]

An Act further to amend the Indian Works of Defence Act, 1903.

II of 1903. WHEREAS it is expedient further to amend the Indian Works of Defence Act, 1903 ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Indian Works of Defence (Amendment) Act, 1921.

II of 1908. Amendment of section 2, Act VII of 1908.

2. In section 2 of the Indian Works of Defence Act, 1903 (hereinafter referred to as the said Act), for clauses (c) and (d), the following clauses shall be substituted, namely :—

"(c) the expression 'Distr' means one of the Districts into which India is, for military purposes or the time being, divided ; it includes

